UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
PLANO DIVISION

TEXAS ADVANCED OPTOELECTRONICS SYSTEMS, INC.,	DOCKET NO. 4:08CV451
	MARCH 4, 2015
V.	8:54 A.M.
	PLANO, TEXAS
INTERSIL CORPORATION	

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REPORTER'S TRANSCRIPT OF FINAL ARGUMENTS

BEFORE THE HONORABLE RICHARD SCHELL,

UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(JURY NOT PRESENT)

LAW CLERK: HEAR YE, HEAR YE, HEAR YE, THIS UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF TEXAS HOLDING A REGULAR SESSION IN THE CITY OF PLANO IS NOW OPEN ACCORDING TO LAW. GOD SAVE THESE UNITED STATES AND THIS HONORABLE COURT.

THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS. OKAY. WE HAVE PRESENT IN THE COURTROOM COUNSEL FOR BOTH SIDES. MR. ALIBHAI, MR. MCCABE, MR. WILSON ARE HERE FOR THE PLAINTIFF, ALONG WITH MR. LANEY, THE CEO OF TAOS.

AND ALSO FOR THE DEFENDANT, WE HAVE MR. BRAGALONE, MR. KIMBLE, MR. GRAHAM, AND MR. TOKOS, THE GENERAL COUNSEL FOR INTERSIL. CASE -- WE'RE SCHEDULED THIS MORNING TO BEGIN FINAL ARGUMENTS. EACH SIDE HAS AGREED TO 90 MINUTES PER SIDE FOR FINAL ARGUMENTS. PLAINTIFF HAVING THE BURDEN OF PROOF ON FOUR CLAIMS IN THE CASE HAS THE RIGHT TO OPEN AND CLOSE FINAL ARGUMENTS.

I THINK YOU SAID, MR. ALIBHAI, THAT YOU AND MR. MCCABE WOULD SHARE YOUR OPENING ARGUMENT ALSO?

MR. ALIBHAI: YES, YOUR HONOR.

THE COURT: NOW, DO YOU WANT ME TO GIVE YOU ANY WARNING AS TO HOW MUCH TIME YOU'VE USED, OR WILL

MR. WILSON HELP YOU WITH THAT?

MR. ALIBHAI: MR. WILSON CAN'T HELP US WITH THAT, BUT MS. CHEN'S GOING TO BE SITTING RIGHT HERE, AND SHE'S GOING TO HELP US WITH THAT.

MR. WILSON: IT'S TRUE.

THE COURT: AND I FORGOT MS. CHEN IS HERE TODAY TOO. SO THAT'S FINE.

ALL RIGHT. LET'S SEE, MR. BRAGALONE, DO YOU -- ARE YOU GOING TO MAKE THE FULL ARGUMENT FOR INTERSIL?

MR. BRAGALONE: YES, YOUR HONOR.

THE COURT: YOU WILL? OKAY. ALL RIGHT. DO YOU WANT ME TO GIVE YOU ANY KIND OF WARNING WHEN YOU GET CLOSE TO YOUR 90 MINUTES?

MR. BRAGALONE: YOUR HONOR, IF I GET DOWN TO TWO, THEN YES.

THE COURT: OKAY. SURE WILL. NOW, YOU WERE GOING TO EXCHANGE DEMONSTRATIVE EXHIBITS NO LATER THAN 7:00 A.M. THIS MORNING. SO, ARE THERE ANY ISSUES WITH THAT, WITH THOSE EXHIBITS?

MR. ALIBHAI: YOUR HONOR, WE HAVE ONE ISSUE WITH THE SLIDES.

THE COURT: OKAY. WHAT IS IT?

MR. ALIBHAI: AND I THINK IF THEY PUT IT UP, IT MIGHT BE EASIER FOR YOUR HONOR TO SEE. IT'S

SLIDES 37 AND 38. WHEN -- WHEN I ARGUED THE MOTIONS FOR JUDGMENT AS A MATTER OF LAW, ONE OF THE ISSUES I RAISED WAS THAT THE LAST TWO SUBPARTS OF THEIR DECLARATORY RELIEF CLAIM WAS ABOUT THE FACT THAT THEY WERE RELYING ON THE BROADVIEW/INTERSIL AGREEMENT, AND I THOUGHT THAT WE HAD AN AGREEMENT ON THE RECORD THAT THEY WOULD NOT BE ABLE TO RELY ON THE BROADVIEW/INTERSIL AGREEMENT. AND THEY INTEND TO ARGUE THE BROADVIEW/INTERSIL AGREEMENT TO THE JURY AND THE CERTIFICATE OF DESTRUCTION MAKING REFERENCE TO THAT.

THE COURT: ALL RIGHT, NOW, THAT -- THAT WAS IN A DOCUMENT -- WHAT DOCUMENT WAS THAT IN?

MR. ALIBHAI: IT WAS THE CERTIFICATE OF DESTRUCTION, WHICH IS --

THE COURT: WELL, NO, THERE WAS A REFERENCE TO SUBPARTS OF SOME DOCUMENT.

MR. ALIBHAI: SORRY. THAT WAS THEIR ORIGINAL ANSWER AND COUNTERCLAIMS.

THE COURT: YES.

MR. ALIBHAI: IT WAS THE FIFTH COUNTERCLAIM, YOUR HONOR.

THE COURT: OKAY. OKAY, THAT'S DOCUMENT 88. THERE WAS AN AGREEMENT -- I THINK IT WAS ON THE EVENING WE HAD THE RULE 50 MOTION HEARING, SO IT WAS -- IT WAS NIGHT BEFORE LAST, THERE WAS AN AGREEMENT

THAT -- THE WAY I UNDERSTOOD IT -- THAT INTERSIL WOULD NOT ARGUE THAT -- LET'S SEE. LET ME READ IT FIRST.

THE WAY I UNDERSTOOD IT WAS INTERSIL AGREED NOT TO ARGUE THAT THE DESTRUCTION OF TAOS'S DOCUMENTS CONSISTENT WITH THE TERMS OF THE LETTER DATED SEPTEMBER 23, 2004, FROM DOUG BALOG TO KIRK LANEY DID NOT CONSTITUTE A MATERIAL BREACH OF INTERSIL'S OBLIGATIONS TO TAOS. THAT'S PART D OF PARAGRAPH 138 IN DOCUMENT 88.

PART E READS, "INTERSIL WAS AND IS ENTITLED TO RETAIN A COPY OF THE MATERIALS IT HAD RECEIVED FROM TAOS," AND THE DEFENDANT AGREED NOT TO ARGUE THAT. THAT WAS MY UNDERSTANDING. SO, LET'S SEE. DO WE HAVE THE SLIDES? CAN WE PUT THOSE UP? IS MR. WELCH PUTTING THOSE UP?

MR. BRAGALONE: YOUR HONOR, WE HAVE THE NOTEBOOKS HERE.

THE COURT: CAN MR. WELCH PUT THOSE SLIDES UP?

MR. BRAGALONE: I'LL SEE, YOUR HONOR.

THE COURT: OKAY. THE SLIDE THAT'S ON THE SCREEN --

MR. ALIBHAI: IT'S THE SLIDE BEFORE THAT AS WELL.

THE COURT: OKAY.

MR. ALIBHAI: THEY'RE ARGUING MISTAKE ON THAT SLIDE.

THE COURT: THE SLIDE THAT'S ON THE SCREEN IS -- READS, "TAOS NEVER COMPLAINS OF CERTIFICATE OF DESTRUCTION." IT THEN HAS AN E-MAIL FROM A PERSON AT BROADVIEW NAMED TODD COLEMAN -- NO, I'M SORRY, AN E-MAIL FROM KIRK LANEY AT TAOS TO DOUG BALOG AT INTERSIL DATED SEPTEMBER 23, 2004, WHERE MR. LANEY SAYS TO MR. BALOG, "THANK YOU FOR YOUR ATTENTION TO THIS MATTER. YOUR SCANNED ORIGINAL CERTIFICATE OF DESTRUCTION HAS BEEN RECEIVED AND COVERS OUR CONCERNS."

OKAY. SO WHAT DO YOU WANT TO ARGUE?

MR. ALIBHAI: AND IT'S THE SLIDE BEFORE THAT, YOUR HONOR, THAT DISCUSSES THE MISTAKE.

THE COURT: ALL RIGHT. LET ME SEE THE SLIDE BEFORE THAT. AGAIN, THIS SLIDE AT THE TOP SAYS, "CERTIFICATE OF DESTRUCTION REVEALS MISTAKE." IT IS A LETTER FROM INTERSIL TO MR. LANEY DATED SEPTEMBER 23, 2004, AND IT SAYS THAT THIS LETTER CONSTITUTES INTERSIL CORPORATION'S CERTIFICATE OF DESTRUCTION OF TANGIBLE CONFIDENTIAL INFORMATION PROVIDED TO INTERSIL UNDER THE NONDISCLOSURE AGREEMENT BETWEEN INTERSIL CORPORATION AND BROADVIEW INTERNATIONAL, DATED JULY 1, 2004."

OKAY. WHAT DO YOU WANT TO ARGUE,

MR. BRAGALONE?

MR. BRAGALONE: WELL, YOUR HONOR, FIRST OF ALL, I WILL NOT BE ARGUING WHAT WE COMMITTED IN THE PRETRIAL CONFERENCE DURING THE JUDGMENTS AS A MATTER OF LAW.

THE COURT: OKAY. AND -- AND WHAT DID YOU AGREE NOT TO ARGUE?

MR. BRAGALONE: YES. SPECIFICALLY, AS THE COURT NOTED, INTERSIL AGREED NOT TO ARGUE THAT THE DESTRUCTION OF TAOS DOCUMENTS CONSISTENT WITH THE TERMS OF THE LETTER DATED SEPTEMBER 23, 2004, FROM DOUG BALOG TO KIRK LANEY DID NOT CONSTITUTE A MATERIAL BREACH. WE'RE NOT CONTENDING THAT THIS ABSOLVES US IN ANY WAY OF THE MATERIAL BREACH. THAT ISSUE'S ALREADY BEEN DECIDED.

THE COURT: OKAY.

MR. BRAGALONE: WE'RE NOT ARGUING THAT AT ALL. TO THE CONTRARY, AS TO THE JUXTAPOSITION TO THE SLIDES, WE'RE ALSO NOT ARGUING THAT WE WERE ENTITLED TO RETAIN A COPY OF ANY MATERIALS THAT WERE RECEIVED, NOT AT ALL.

THE COURT: OKAY.

MR. BRAGALONE: IN FACT, THE JUXTAPOSITION OF THE TWO SLIDES IS VERY ILLUSTRATIVE OF THE POINT HERE THAT WE ARE GOING TO ARGUE THAT THE CERTIFICATE OF DESTRUCTION PUT THEM ON NOTICE THAT WE HAD THE WRONG

NDA. VERY DIFFERENT. AND THEN, THE NEXT SLIDE, 38, THAT THEY DIDN'T COMPLAIN ABOUT THAT AT THE TIME.

THE COURT: OKAY.

MR. BRAGALONE: THAT'S ALL.

THE COURT: WHAT'S THE OBJECTION, MR. ALIBHAI?

MR. ALIBHAI: I'M NOT SURE WHAT THEM HAVING THE WRONG NDA HAS TO DO WITH ANYTHING. IT CAN'T BE A BREACH.

THE COURT: WELL, MR. BRAGALONE CONCEDES THAT THESE COMMUNICATIONS DON'T ABSOLVE THEM OF THEIR RESPONSIBILITY UNDER THE CONFIDENTIALITY AGREEMENT TO DESTROY OR RETURN ALL THE CONFIDENTIAL INFORMATION SUPPLIED TO INTERSIL FROM TAOS. THESE DOCUMENTS SPEAK FOR THEMSELVES. THERE WAS -- AND I DON'T KNOW HOW TO FIND THEM IN THE RING BINDER HERE.

MR. BRAGALONE: IT'S NUMBER 37 AND 38, YOUR HONOR, THOSE PAGES AT THE VERY BOTTOM LEFT-HAND CORNER.

THE COURT: OKAY. THESE DOCUMENTS OBVIOUSLY SPEAK FOR THEMSELVES. THEY WERE EXCHANGED ON THE VERY SAME DAY, SEPTEMBER 23, 2004. WHO WROTE THE FIRST ONE? WAS THAT FROM MR. TOKOS?

MR. BRAGALONE: IT WAS FROM MR. BALOG.

THE COURT: OH, THAT'S RIGHT. MR. BALOG. SO, MR. BALOG SAYS -- CERTIFIES THAT TANGIBLE

CONFIDENTIAL INFORMATION PROVIDED TO INTERSIL HAS BEEN DESTROYED UNDER THE NDA BETWEEN INTERSIL AND BROADVIEW." OBVIOUSLY, THE WRONG NDA.

MR. LANEY RESPONDS, SAYING, THANK YOU FOR YOUR ATTENTION. WE'VE RECEIVED IT AND THAT COVERS OUR CONCERNS. I MEAN, THEY'RE DEFINITELY -- THOSE ARE DEFINITELY TWO PIECES OF CORRESPONDENCE THAT CROSSED BETWEEN THE TWO PARTIES.

MR. ALIBHAI: AS LONG AS THAT'S WHAT'S BEING ILLUSTRATED BY THESE SLIDES AND NOTHING MORE THAN THAT REGARDING THE BREACH OF THE CONTRACT OR ANY OBLIGATION BETWEEN TAOS AND INTERSIL AS OPPOSED TO BETWEEN INTERSIL AND BROADVIEW, THEN THAT'S ACCEPTABLE.

THE COURT: OKAY. WELL, IT DOES REVEAL THAT MR. LANEY SAID TO MR. BALOG, THAT COVERS OUR CONCERNS.

MR. ALIBHAI: THAT'S CORRECT.

THE COURT: OKAY. OKAY. MS. REESE HAS COPIES OF THE JURY INSTRUCTIONS FOLLOWING OUR HEARING LAST NIGHT AT THE CHARGE CONFERENCE. SHE HAS COPIES FOR COUNSEL AND A COPY FOR EACH JUROR. MY PRACTICE IS TO READ THE INSTRUCTIONS BEFORE YOU ARGUE SO THE JURY HAS THE -- HAS AT LEAST HEARD THE JURY INSTRUCTIONS BEFORE THEY HEAR YOUR ARGUMENTS ON THE LAW AND THE FACTS. I SHOULD SAY YOUR ARGUMENTS ON THE FACTS AND HOW THE LAW

APPLIES TO THOSE FACTS.

MR. ALIBHAI: YOUR HONOR, IS IT YOUR PRACTICE TO READ THE VERDICT FORM AS WELL OR JUST THE CHARGE?

THE COURT: I READ THE VERDICT FORM TOO.

MR. ALIBHAI: OKAY, THANK YOU.

THE COURT: I READ THE WHOLE THING.

OKAY, MR. ALIBHAI, ARE YOU READY?

MR. BRAGALONE: OH, YOUR HONOR, I DIDN'T KNOW IF MR. ALIBHAI WAS DONE WITH HIS COMMENTS TO OUR SLIDES, BUT WE HAD A COUPLE OF CONCERNS ABOUT THEIRS THAT WE WANTED TO RAISE.

THE COURT: OH, OKAY. I DIDN'T KNOW THAT.

MR. BRAGALONE: SO, THE FIRST ONE, YOUR HONOR, ACTUALLY RELATES ALSO TO THE EMERGENCY MOTION THAT WE FILED A COUPLE DAYS AGO, BUT --

THE COURT: I HAVE NOT HAD TIME TO LOOK AT THAT. I HAVE A COPY RIGHT HERE. I UNDERSTAND IT HAS TO DO WITH A RULING I MADE ON JUNE 17TH IN THE MIDDLE OF TRIAL ON ONE OF YOUR OBJECTIONS TO SOME TESTIMONY. I HAVE NOT HAD A CHANCE TO READ THIS. IT WAS FILED TWO DAYS AGO. I GOT IT YESTERDAY. I WAS WORKING ON JURY INSTRUCTIONS, AND WE HAD A HEARING UNTIL PRETTY LATE LAST NIGHT. I THINK IT WAS ABOUT 9:30. AND I DON'T HAVE A RESPONSE FROM THE PLAINTIFF, SO --

MR. BRAGALONE: WELL --
THE COURT: I DON'T HAVE AN OPPORTUNITY TO ADDRESS THAT RIGHT NOW.
MR. BRAGALONE: I UNDERSTAND. OUR OBJECTION, THOUGH, IS TO THEIR SLIDES, WHICH PERPETUATE THE SAME PROBLEM THAT WE ADDRESSED IN THE MOTION. SO, I -- I'M GOING TO ADDRESS ONLY THE SLIDES AND THE PROBLEM WITH THOSE NOW.
THE COURT: ALL RIGHT.
MR. BRAGALONE: THE ISSUE, YOUR HONOR, IS THAT, FIRST OF ALL, ALLOWING A WITNESS TO DEMONSTRATE WHAT HE OBSERVED ANOTHER WITNESS DO OUT OF COURT IS HEARSAY. IT'S NONVERBAL HEARSAY.
THE COURT: OKAY.
MR. BRAGALONE: AND WE MADE A TIMELY OBJECTION AT THE TIME. WE SINCE WERE ABLE TO PROVIDE THE COURT WITH SOME CASE AUTHORITY AND THE RULE ITSELF THAT INDICATES THAT -- THAT THAT IS, IN FACT, HEARSAY. IT'S BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED. NOT ONLY ARE THEY OFFERING IT AGAIN IN THEIR DEMONSTRATIVES, APPARENTLY FOR THE TRUTH OF THE MATTER ASSERTED, IT'S IN THERE SEVERAL TIMES, AND THEY'RE RELYING ON THIS -- WHAT THEY DREW UP ON THIS WHITEBOARD HERE. AND WE OBJECT FOR A COUPLE REASONS.
FIRST OF ALL, IT IS CLEARLY HEARSAY, AND

IT'S NOW BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED. SECOND, THE WHITEBOARD AND WHETHER OR NOT SOMETHING WAS DELIVERED OR DISSEMINATED OR COMMUNICATED BY WHITEBOARD WAS NEVER, NEVER IN THE HISTORY OF THIS LITIGATION, DISCLOSED. WE DEPOSED MR. LANEY THREE TIMES. WE DEPOSED MR. ASWELL, MR. DIERSCHKE. NEVER -- AND WE ASKED, TELL US ALL THE TRADE SECRETS. JUDGE BUSH ORDERED THAT IF THEY WERE TO IDENTIFY ANY ADDITIONAL TRADE SECRETS OTHER THAN WHAT WAS ON THAT LIST, THAT THEY HAD TO STATE THE MANNER IN WHICH IT WAS DISSEMINATED. AT NO TIME WAS A WHITEBOARD EVER DISCLOSED.

THE COURT: ARE YOU TALKING ABOUT A WHITEBOARD USED AT ONE OF THE MEETINGS WHERE INTERSIL AND TAOS REPRESENTATIVES WERE EXCHANGING INFORMATION?

MR. BRAGALONE: SO --

THE COURT: IS THAT WHAT YOU'RE TALKING ABOUT?

MR. BRAGALONE: I'M TALKING ABOUT THE WHITEBOARD AND THEN WHAT WAS DONE IN THE COURTROOM TO RECOUNT THE HEARSAY OF WHAT THEY ALLEGED A TAOS EMPLOYEE WROTE ON THE WHITEBOARD.

THE COURT: AT WHAT? AT A MEETING BETWEEN TAOS AND INTERSIL?

MR. BRAGALONE: YES. YES, IT WAS A

MEETING. AND THE IRONY IS, IS THAT EVEN THOUGH THIS WAS NEVER DISCLOSED AT ANY TIME IN THE HISTORY OF THIS LAWSUIT, NOW, THEY SAY THAT THAT WAS THE CROWN JEWELS, THAT THAT'S APPARENTLY THE CENTERPIECE OF THEIR CASE IS WHAT WAS DISCLOSED ON THIS WHITEBOARD, AND IT'S VERY CONVENIENT, BECAUSE THEY DON'T HAVE ANY DOCUMENTS. THERE'S NOTHING IN THE CASE THAT SHOWS WHAT THEY NOW CLAIM THAT THEY WROTE ON THIS WHITEBOARD. AND THEY NEVER DISCLOSED THAT AT ANY TIME IN DISCOVERY. SO, IT ACTUALLY VIOLATES JUDGE BUSH'S ORDER.

THEY WEREN'T PERMITTED TO RAISE A NEW TRADE SECRET. THEY CAN'T COME TO TRIAL AND BOTH DISCLOSE SOMETHING THAT THEY NEVER SHOWED UP -- SHOWED IN DISCOVERY AND THAT'S CLEARLY HEARSAY. AND TO MAKE MATTERS WORSE NOW, THEY'VE INCORPORATED IT NUMEROUS TIMES THROUGHOUT THEIR SLIDES.

FOR EXAMPLE, 8091, 8091.

THE COURT: I DON'T HAVE ANY OF THOSE SLIDES, SO I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

MR. BRAGALONE: WELL, I THINK PERHAPS THEY CAN BE PUT UP BY THE PLAINTIFF JUST AS WE PUT OURS UP.

THE COURT: OKAY.

MR. BRAGALONE: OR PERHAPS THEY HAVE A NOTEBOOK FOR YOUR HONOR.

THE COURT: DO YOU HAVE EITHER A NOTEBOOK,

OR CAN YOU PUT THEM UP?

MR. ALIBHAI: WELL, WE -- WE CAN GET OUR TECH PERSON BACK IN.

ID 809-02.

MR. BRAGALONE: SO HERE IT IS ON THE SCREEN, YOUR HONOR.

THE COURT: OKAY.

MR. BRAGALONE: AND AS WE NOTED IN OUR MOTION, THE FUNDAMENTAL PROBLEM IS THAT EVEN THOUGH MR. CECIL ASWELL, THE INVENTOR ON THE '981 PATENT WAS APPARENTLY SUPPOSEDLY THE AUTHOR AND MADE THIS OUT OF COURT STATEMENT, THEY DIDN'T BRING HIM TO TRIAL, SO WE WEREN'T ABLE TO EXAMINE HIM. THEY DIDN'T DISCLOSE IT AT ANY TIME IN DISCOVERY, SO WE WEREN'T ABLE TO DEPOSE HIM ABOUT IT.

SO, WE HAD NO NOTICE OF THIS UNTIL WE HEARD ABOUT IT FOR THE FIRST TIME WHEN MR. ALIBHAI STARTS WRITING ON THE BOARD. AND IT'S HIGHLY PREJUDICIAL BECAUSE WE BELIEVE --

THE COURT: DID MR. ALIBHAI WRITE THIS?

MR. ALIBHAI: NO, I DIDN'T, YOUR HONOR.

MR. BRAGALONE: MR. DIERSCHKE, I THINK, DID.

THE COURT: HE WROTE IT OVER HERE ON THE WHITEBOARD? BACK OVER HERE?

MR. BRAGALONE: YES, YOUR HONOR.
THE COURT: I JUST DON'T REMEMBER. OKAY.
MR. BRAGALONE: AND NOW, THEY WANT TO OBVIOUSLY RELY ON THIS WHEN IT -- IT'S HEARSAY, AND --
THE COURT: ALL RIGHT, SO, MR. DIERSCHKE WROTE THIS IN THE COURTROOM ON FEBRUARY 17TH WHEN HE TESTIFIED, AND HE WAS -- ACCORDING TO YOU, HE WAS WRITING WHAT HE SAW MR. ASWELL PUT ON THE WHITEBOARD YEARS AGO WHEN THERE WAS A MEETING BETWEEN TAOS AND INTERSIL?
MR. BRAGALONE: YES, YOUR HONOR, THAT'S --
THE COURT: IS THAT THE FRAMEWORK?
MR. BRAGALONE: THAT IS CORRECT. THAT'S WHAT THEY CLAIM, AND THAT IS -- THAT'S CLEARLY WHAT'S CALLED NONVERBAL HEARSAY, RECOUNTING WHAT AN OUT-OF-COURT DECLARANT WROTE. AND WE CITED FOR THE COURT THE AUTHORITY ON THAT.
THE COURT: I KNOW, BUT I DON'T HAVE A CHANCE TO READ IT BECAUSE YOU FILED IT THE DAY BEFORE YESTERDAY.
MR. BRAGALONE: IT'S VERY SHORT, YOUR HONOR. IT BARELY GOES ON PAST A FIFTH PAGE, BUT IT -- WE --
THE COURT: OKAY. YOU KNOW, THIS WOULD REQUIRE ME TO RECESS, GET OFF THE BENCH, GET WITH THE

COURT REPORTER, LOOK BACK AT THAT TESTIMONY, SEE WHAT WAS SAID, SEE WHAT YOUR OBJECTION WAS, SEE WHAT THE NEXT QUESTION WAS, THAT SORT OF THING.

MR. BRAGALONE: WELL, AND YOUR HONOR DID SUSTAIN WHEN -- WHEN MR. DIERSCHKE WAS ASKED WHAT WAS SAID, YOUR HONOR SUSTAINED THE HEARSAY OBJECTION TO THAT.

THE COURT: OKAY.

MR. BRAGALONE: AND THEN HE WAS ASKED, WELL, WHY DON'T YOU JUST COME WRITE WHAT YOU SAW WAS WRITTEN BY MR. ASWELL, AND YOUR HONOR DENIED THAT HEARSAY OBJECTION.

THE COURT: OKAY.

MR. BRAGALONE: YOUR HONOR, WE WOULD NOT HAVE FILED THIS MOTION IN THE MIDDLE OF TRIAL -- IN FACT, I -- I THINK THIS IS THE ONLY MOTION WE FILED IN THE MIDDLE OF TRIAL, EXCEPT THAT IT WAS SO CRITICAL.

THE COURT: OKAY. MR. ALIBHAI, WHAT WOULD YOU LIKE TO SAY?

MR. ALIBHAI: FIRST OF ALL, I THOUGHT IT WAS AN OBJECTION TO THE SLIDE.

THE COURT: IT IS.

MR. ALIBHAI: THE SLIDE IS A PICTURE OF WHAT DR. DIERSCHKE DREW IN THE COURTROOM.

THE COURT: RIGHT.

MR. ALIBHAI: OVER AN OBJECTION THAT WAS OVERRULED BY YOUR HONOR. HE WAS ALLOWED TO -- THE COURT SAID, "THAT'S NOT HEARSAY." MR. KIMBLE SAID, "THANK YOU, YOUR HONOR," AND THE COURT SAID, "GO AHEAD, MR. DIERSCHKE." AND THEN HE DREW IT.

SO, I'M NOT SHOWING SOMETHING THAT YOU SUSTAINED AN OBJECTION TO. I'M SHOWING WHAT YOU ALLOWED THE WITNESS TO DO.

THE COURT: OKAY. I UNDERSTAND.

MR. ALIBHAI: AND THEN WITH RESPECT -- AND WITH RESPECT TO THIS ARGUMENT NOW, THAT THIS IS SOMETHING THAT WAS NOT DISCLOSED, THEY NEVER MADE THAT OBJECTION DURING TRIAL. YOU DON'T GET TO SHOW UP THE DAY OF CLOSING ARGUMENTS AND MAKE NEW OBJECTIONS TO EVIDENCE THAT'S ALREADY BEEN PUT IN AND MAKE THE ARGUMENT AFTER WE'VE RESTED. IF THEY'D MADE THIS ARGUMENT TIMELY, THEN WE COULD HAVE DONE SOMETHING ABOUT IT. BUT THIS IS EVIDENCE THE JURY'S HEARD.

THE COURT: OKAY. MS. CHEN IS APPARENTLY ABLE TO PULL THAT UP.

MR. ALIBHAI: SHE HAS IT RIGHT HERE, YES.

THE COURT: CAN SHE GIVE IT TO OUR COURT REPORTER AND THE COURT REPORTER CAN PULL IT UP OVER HERE FOR ME?

CAN YOU DO THAT, MS. MCGEE?

LET'S GO OFF THE RECORD.

(A BREAK WAS TAKEN FROM 9:20 A.M.

THE COURT: WHAT IS MR. DIERSCHKE'S POSITION? IS HE WITH TAOS?

MR. ALIBHAI: CHIEF TECHNICAL OFFICER.

THE COURT: OKAY. WHAT IS HIS TRAINING AND EDUCATION AND SO FORTH?

MR. ALIBHAI: HE'S --

THE COURT: YOU PROBABLY SAID, BUT I DON'T REMEMBER.

MR. ALIBHAI: HE'S THE WITNESS, YOUR HONOR, THAT TESTIFIED HE HAD A BACHELOR'S DEGREE AND A MASTER'S DEGREE AND A PH.D. FROM STANFORD. HE HAD WORKED 30 YEARS IN OPTOELECTRONICS, AND HE'S ONE OF THE INVENTORS OF THE '981 PATENT.

THE COURT: DO YOU REMEMBER WHAT DISCIPLINES HE HAS HIS DEGREES IN? ARE THEY TECHNICAL?

MR. ALIBHAI: ALL ELECTRICAL ENGINEERING.

THE COURT: OKAY. MR. SERRATO, WOULD YOU TELL THE JURY THAT WE'RE IN DISCUSSIONS ON SOME MATTERS AND I'LL BE WITH THEM AS SOON AS I CAN.

COURT SECURITY OFFICER: YES, SIR.

(BREAK TAKEN FROM 9:28 A.M. TO 9:32 A.M.)

THE COURT: OKAY. HERE'S THE EXCHANGE THAT OCCURRED ON FEBRUARY 17, 2015, IN THE MIDDLE OF THIS

TRIAL. MR. DIERSCHKE WAS ON THE STAND. HE HAS A TECHNICAL BACKGROUND. I'M INFORMED BY MR. LANEY THAT HE WAS THE -- WELL, LET'S SEE. I WROTE IT DOWN. HE WAS THE CHIEF TECHNICAL OFFICER OF TAOS. I DID, IN MY NOTES, NOTE THAT EUGENE DIERSCHKE ATTENDED SAINT EDWARDS UNIVERSITY AND THEN THE UNIVERSITY OF TEXAS. HE HAS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING. HE HAS A MASTER'S DEGREE IN ELECTRICAL ENGINEERING AND A PH.D. IN ELECTRICAL ENGINEERING FROM STANFORD UNIVERSITY. HE WORKED FOR T.I. FOR 30 YEARS. HE WAS ONE OF THE FOUNDERS OF TAOS. HE'S A NAMED INVENTOR ON THE '981 PATENT.

SO, WITH THAT BACKGROUND, HE WAS ON THE STAND. APPARENTLY, THERE WAS AN EXHIBIT THAT WAS -- THAT WAS ON THE SCREEN, PERHAPS, BECAUSE THERE WAS A QUESTION, I ASSUME BY MR. ALIBHAI, "SO, THE PART THAT DEALS WITH AMBIENT LIGHT SENSING OF THIS PICTURE, CAN YOU POINT THAT OUT TO US?"

ANSWER: "THE PARTICULAR AREA THAT HAS TO DO WITH THE DUAL-DIODE APPROACH AND THE RECTANGULAR AREA, THE SORT OF DARK AREA WHICH IS SHOWN IN THE MIDDLE OF THE PARAGRAPH."

MAYBE THE PATENT WAS ON THE SCREEN. I DON'T RECALL WHAT DOCUMENT WAS ON THE SCREEN.

QUESTION --

MR. ALIBHAI: IT WAS THE PRESENTATION MADE DURING THAT MEETING.

THE COURT: OKAY.

MR. ALIBHAI: THE ENGINEERING SLIDES AT THE MEETING IN PLANO.

THE COURT: OKAY. VERY WELL.

QUESTION: "DID INTERSIL ASK QUESTIONS ABOUT THE TSL2560 DURING THE MEETING?"

ANSWER: "YES, THERE WERE A NUMBER OF QUESTIONS."

QUESTION: "WHAT TYPE OF QUESTIONS WAS INTERSIL ASKING ABOUT THE 2560 AT THIS MEETING?"

ANSWER: "ONE PARTICULAR SET OF QUESTIONS HAD TO DO WITH THE PHOTODIODE ITSELF."

QUESTION: "AND DURING THE MEETING, DID YOU OR MR. ASWELL RESPOND TO THOSE QUESTIONS?"

ANSWER: "WELL, CECIL ASWELL WOULD HAVE BEEN THE PRIMARY PERSON DISCUSSING IT, AND IT WAS SUFFICIENTLY" -- AND AT THAT POINT, THERE'S AN OBJECTION BY MR. KIMBLE, WHO SAYS HE'S ABOUT TO RECITE WHAT CECIL ASWELL SAID. WE -- WE OBJECT, HEARSAY.

THE COURT SAID, "THE QUESTION WAS, AND DURING THE MEETING, DID YOU OR MR. ASWELL RESPOND TO THOSE QUESTIONS? ALL RIGHT. I'LL SUSTAIN THE OBJECTION."

BECAUSE I DIDN'T KNOW -- HE WAS ABOUT TO SAY WHAT DIERSCHKE SAID AT THE MEETING OR WHAT ASWELL SAID AT THE MEETING.

AND THEN I SAID TO MR. DIERSCHKE, "MR. DIERSCHKE, YOU CAN TELL US WHAT YOU SAID BUT NOT WHAT MR. ASWELL SAID."

MR. ALIBHAI, THEN, CONTINUED HIS QUESTIONS AND SAID, "AND I WASN'T ASKING WHAT MR. ASWELL SAID. I JUST WANTED TO KNOW WHETHER HE RESPONDED TO THOSE QUESTIONS."

ANSWER: "YES."

QUESTION: "AND OTHER THAN VERBALLY RESPONDING TO THOSE QUESTIONS, DID HE PROVIDE ADDITIONAL INFORMATION ABOUT THE PHOTODIODE STRUCTURE DURING THE MEETING?"

ANSWER: "I RECALL THAT HE DEFINITELY WENT UP TO THE BOARD TO DRAW A BASIC DESCRIPTION OF THE PHOTODIODE."

QUESTION: "AND CAN YOU DRAW FOR ME WHAT A BASIC DESCRIPTION OF THE PHOTODIODE OF THE 2560 LOOKS LIKE?"

ANSWER: "YES."

QUESTION: "YOU ARE FAMILIAR WITH IT?"

ANSWER: "YES."

QUESTION: "OKAY." MR. ALIBHAI SAYS, "YOUR

HONOR, CAN THE WITNESS STEP DOWN TO DRAW ON THE WHITEBOARD?"

THE COURT SAID, "YES."

MR. KIMBLE SAYS, "YOUR HONOR, BEFORE HE GOES A LITTLE FURTHER, WE WOULD OBJECT. I'M NOT EXACTLY SURE I UNDERSTAND WHAT HE'S DOING. BUT IF HE'S DRAWING ON THE BOARD WHAT HE REMEMBERS SOMEBODY ELSE DREW ON THE BOARD AT THE TIME, I THINK THE SAME RULING THAT YOU" -- LET'S SEE -- "THAT YOU HAD AS TO HEARSAY WOULD APPLY."

THE COURT: "WAIT A MINUTE."

MR. KIMBLE: "AND HE'S STILL DRAWING."

THE COURT: "NO, NO, HE'S NOT REPEATING WHAT SOMEONE ELSE SAID. EVEN IF HE'S DRAWING WHAT SOMEONE ELSE SAID, IT'S SOMETHING HE SAW." THE COURT SAID, "THAT'S NOT HEARSAY."

AFTER MR. ALIBHAI SAID, "THAT'S CORRECT, YOUR HONOR," THE COURT SAID, "THAT'S NOT HEARSAY. OKAY." MR. KIMBLE THEN SAYS, "THANK YOU, YOUR HONOR."

OKAY. I HAVEN'T READ YOUR MOTION HERE, BUT I, JUST OFF THE TOP OF MY HEAD, THINK I AGREE WITH YOU, MR. BRAGALONE, THAT IF MR. DIERSCHKE IS RECITING WHAT SOMEONE ELSE DREW ON A BOARD, THEN THAT WOULD BE NONVERBAL HEARSAY. I THINK YOU'RE RIGHT ON THAT, ALTHOUGH I HAVE NOT HEARD FROM MR. ALIBHAI IN RESPONSE TO YOUR MOTION.

SO, WHEN I SAID, ON THE 17TH, "IF HE'S DRAWING ON THE BOARD WHAT HE REMEMBERS SOMEONE ELSE DREW ON THE BOARD" -- WAIT A MINUTE. LET'S SEE. WHEN I SAID ON THE 17TH, "EVEN IF HE'S DRAWING WHAT SOMEONE ELSE DREW, IT'S SOMETHING HE SAW." OKAY. I DON'T THINK THAT MAKES ANY DIFFERENCE. I THINK THAT WOULD BE HEARSAY. BUT HERE, WHAT I HEARD -- AND THIS IS WHAT I WAS LOOKING FOR -- IS THAT DIERSCHKE TESTIFIED THAT HE RECALLED ASWELL WENT UP TO THE BOARD TO DRAW A DESCRIPTION OF THE PHOTODIODE, BUT MR. ALIBHAI'S QUESTION WAS, "AND CAN YOU DRAW FOR ME WHAT A BASIC DESCRIPTION OF THE PHOTODIODE OF THE 2560 LOOKS LIKE?"

ANSWER: "YES."

QUESTION: "YOU'RE FAMILIAR WITH IT?" "MR. DIERSCHKE, YOU'RE FAMILIAR WITH IT?"

ANSWER: "YES."

HE'S AN ELECTRICAL ENGINEER, HAS THREE DEGREES IN ELECTRICAL ENGINEERING. HE'S A CO-INVENTOR OF THE '981 PATENT. IT WAS NOT CLEAR -- WELL, IT WAS CLEAR THAT HE HIMSELF, PERSONALLY, WAS FAMILIAR WITH A PHOTODIODE OF THE 2560, AND SO THAT'S -- THAT'S PART OF WHAT I HEARD WHEN I OVERRULED MR. KIMBLE'S OBJECTION.

MR. BRAGALONE: AND YES, YOUR HONOR, THEN WHAT PLAINTIFFS THEN PROCEEDED TO DO IS THEY PROCEEDED

TO RELY ON THAT AS THEIR EVIDENCE OF WHAT WAS ACTUALLY COMMUNICATED AT THAT MEETING BY MR. ASWELL, WHO DIDN'T COME TO TRIAL.

THE COURT: NO, NO.

MR. BRAGALONE: WELL, ACTUALLY, THEY -- THEY DID. IN THE COURSE OF THE REST OF THEIR PRESENTATION, THEY REPEATEDLY REFERRED TO THAT AS EVIDENCE FOR THE TRUTH OF THE MATTER ASSERTED. IN OTHER WORDS, THAT WAS WHAT WAS DISCLOSED BY CECIL ASWELL. AND YOUR HONOR, THIS, PERHAPS --

THE COURT: NO, NO, NO. NO, I'M NOT GOING TO LET THAT STAND. I'VE READ TO YOU WHAT WAS SAID HERE, AND WHAT WAS SAID HERE WAS THAT MR. DIERSCHKE HIMSELF WAS FAMILIAR WITH THE -- WITH WHAT A PHOTODIODE OF THE 2560 LOOKS LIKE. THAT IS NOT HEARSAY.

MR. BRAGALONE: WELL, AND, YOUR HONOR, IF THEY'RE NOT GOING TO SAY IN CLOSING THAT THIS WAS ACTUALLY WHAT WAS DISCLOSED AT THAT MEETING, THEN WE DON'T HAVE A PROBLEM. IF THIS -- IF THIS IS ONLY DR. DIERSCHKE'S DRAWING OF A PHOTODIODE AND NOT BEING ASSERTED TO THIS JURY AS WHAT WAS DISCLOSED BY CECIL ASWELL AT THAT MEETING TO INTERSIL, THOSE ARE TWO VERY DIFFERENT THINGS, AND I ABSOLUTELY AGREE WITH YOUR HONOR. SO, REALLY, WHAT IT DEPENDS ON IS HOW THEY'RE GOING TO USE IT IN CLOSING. JUST LIKE YOU ASKED ME HOW

I WAS GOING TO USE THE TWO SLIDES, I THINK WE NEED TO FIND OUT FROM MR. ALIBHAI IF THEY'RE GOING TO ALLEGE THAT THIS IS WHAT WAS SHOWN TO INTERSIL.

THE COURT: OKAY. MR. ALIBHAI, DO YOU WANT TO RESPOND? AND I'M GOING TO MAKE A RULING SO WE CAN GET GOING.

MR. ALIBHAI: WELL, WITH RESPECT TO THE PARTS THAT YOUR HONOR JUST REFERENCED, YOU'RE CORRECT THAT DR. DIERSCHKE HAD THE KNOWLEDGE AND BACKGROUND, IS FAMILIAR WITH THE PRODUCT, IS THE INVENTOR OF THE PRODUCT THAT'S EMBODIED BY THE PATENT.

THE COURT: RIGHT.

MR. ALIBHAI: AND SO HE WAS ABLE TO AND WAS ALLOWED TO DRAW THAT PICTURE. THE TOP PART IS THE 2560 THAT HE WAS -- THAT WAS BEING DISCUSSED AT THE MEETING, AND THE 2550, HE DREW FOR THE COURT'S BENEFIT, FOR THE JURY'S BENEFIT, JUST AS TO SHOW THE DIFFERENCE.

THE COURT: OKAY.

MR. ALIBHAI: AND SO THAT WASN'T PART OF THE MEETING. IT WAS JUST SOMETHING THAT HE DREW BECAUSE I WANTED TO SHOW THE COMPARISON BETWEEN THE TWO AND HOW THEY CHANGED.

THE COURT: OKAY. BUT I THINK I AGREE WITH MR. BRAGALONE, THAT LOOKING BACK AT THIS EXCHANGE, WHICH IS IN THE MIDDLE OF A TRIAL, JURY'S IN THE BOX, HAPPENS

FAST, YOU -- YOU CANNOT -- LET'S SEE. MR. DIERSCHKE'S TESTIMONY CANNOT BE PORTRAYED TO THE JURY AS PRESENTING WHAT ASWELL SAID BY WAY OF DRAWING ON A BOARD.

MR. ALIBHAI: WELL, THE --

THE COURT: IT CAN BE WHAT DIERSCHKE KNOWS ABOUT THE PHOTODIODE STRUCTURE, BECAUSE HE HAS THAT KIND OF KNOWLEDGE.

MR. ALIBHAI: RIGHT, BUT THIS -- THIS EXCHANGE CONTINUES ON. THE TESTIMONY CONTINUES ON.

THE COURT: I DIDN'T PRINT OFF -- I DON'T KNOW HOW FAR I NEED TO READ HERE.

MR. ALIBHAI: WELL, THAT'S THE POINT, YOUR HONOR. I DON'T KNOW WHY I'M HAVING TO ADDRESS HEARSAY OBJECTIONS ABOUT EVIDENCE THAT WAS ADMITTED INTO EVIDENCE THAT OCCURRED DURING OUR CASE-IN-CHIEF, AND THEY WAITED UNTIL NOW TO BRING IT UP. I COULD HAVE REMEDIED THE SITUATION AT THE TIME. I COULD HAVE BROUGHT MR. ASWELL WHEN HE RETURNED FROM BEING OUT OF THE COUNTRY AND WAS UNAVAILABLE. SO, THERE ARE A NUMBER OF EXCEPTIONS THAT APPLY TO THIS, AND WE HAVEN'T HAD A CHANCE TO BRIEF THAT TO YOUR HONOR.

FIRST OF ALL, THE ISSUE IS -- AND ACCORDING TO THEIR MOTION, THEY'RE SAYING THAT IT WAS MADE TO PROVE THAT TAOS COMMUNICATED ITS ALLEGED TRADE SECRETS TO INTERSIL. IN THE VEMEX CASE AND THE UNITED STATES

VERSUS CANTU CASES, THE FIFTH CIRCUIT HAS SAID, IF YOU'RE SHOWING WHAT WAS SAID TO SHOW THAT IT WAS COMMUNICATED, IT'S NOT HEARSAY. YOU'RE SHOWING -- YOU'RE OFFERING IT TO SHOW THAT IT WAS COMMUNICATED.

AND WHAT MR. DIERSCHKE DID -- DR. DIERSCHKE DID WAS ON PAGE 133, I ASKED HIM --

THE COURT: YOU MEAN, WHETHER IT'S TRUE OR NOT?

MR. ALIBHAI: THAT'S CORRECT. AND ALSO, IT'S HIS IMPRESSION OF WHAT WAS HAPPENING DURING THE MEETING. WE ASKED HIM, DID MR. ASWELL DRAW A SIMILAR CROSS-SECTION AT THE MEETING THAT YOU SAW? AND YOUR HONOR SAID, YOU CAN ANSWER YES OR NO. AND HE SAID -- HE EVEN DREW A SIMILAR PICTURE AS TO WHAT I SHOWED UP THERE ON THE 2560. SO, WITH RESPECT TO THE FIRST PART OF THE --

THE COURT: WAS THERE AN OBJECTION TO THAT?

MR. ALIBHAI: THEY -- THEY OBJECTED, THAT'S RIGHT.

MR. BRAGALONE: YES.

THE COURT: WHAT PAGE IS THAT ON?

MR. ALIBHAI: 133 AND 34.

THE COURT: WELL, I PRINTED OFF THROUGH 133. I DIDN'T PRINT 134.

MR. MCCABE: MAY I APPROACH?

MR. ALIBHAI: CAN MR. MCCABE APPROACH?

THE COURT: YEAH, BUT HOW MUCH FURTHER DO WE NEED TO GO HERE? I MEAN, WHAT DO YOU WANT TO ARGUE?

MR. BRAGALONE: I THINK WE NEED TO FIND OUT WHAT THEY INTEND TO ARGUE, BECAUSE IF THEY INTEND TO ARGUE AND OFFER THIS FOR THE TRUTH OF THE MATTER ASSERTED, THAT THIS IS WHAT WAS SHOWN AT THE TIME TO INTERSIL, THAT'S VERY DIFFERENT THAN, THIS IS A DRAWING THAT DR. DIERSCHKE DID OF WHAT A PHOTODIODE LOOKS LIKE.

THE COURT: WELL, I THINK WHAT MR. ALIBHAI -- I THOUGHT I HEARD HIM SAY IS, IT DOESN'T MATTER WHETHER THIS DRAWING IS ACCURATE OR NOT OR WHETHER IT'S TRUE. IT'S JUST WHAT WAS PRESENTED TO INTERSIL AT THE MEETING.

MR. BRAGALONE: HE -- HE'S VERY CLEARLY OFFERING IT FOR THE TRUTH OF THE MATTER ASSERTED. HE'S NOT OFFERING -- HE'S OFFERING IT TO SHOW THAT THESE PHOTODIODES, THE 2550 AND THE DIFFERENCE IN THE 2560, WAS ACTUALLY COMMUNICATED TO INTERSIL AT THAT MEETING BY THIS DRAWING.

THE COURT: OKAY.

MR. BRAGALONE: IT'S AN OUT-OF-COURT STATEMENT OFFERED FOR THE TRUTH OF THE MATTER.

THE COURT: LET'S PUT THIS IN CONTEXT. THIS IS ONE MEETING ABOUT ONE ASPECT OF THE TECHNOLOGY

THAT TAOS HAS AND HOW IT WAS COMMUNICATED TO INTERSIL.

MR. ALIBHAI: THAT'S CORRECT, YOUR HONOR.

MR. BRAGALONE: AND MAY I PUT IT IN CONTEXT, YOUR HONOR? BECAUSE THIS IS THE ONLY TIME THAT THERE IS ANY ALLEGATION THAT THE DIFFERENCES IN THE PHOTODIODE ARRAY WERE COMMUNICATED TO INTERSIL, THE ONLY EVIDENCE. WE DIDN'T -- WE DIDN'T EVER HEAR ABOUT A WHITEBOARD BEFORE WE CAME TO COURT.

MR. ALIBHAI: THAT'S NOT TRUE. THAT'S NOT TRUE.

THE COURT: DOES THE PLAINTIFF CONTEND THIS IS A TRADE SECRET?

MR. BRAGALONE: YES. THEY ARE --

THE COURT: OKAY. SO WE'RE TALKING ABOUT ONE TRADE SECRET IN THIS WHOLE TRIAL?

MR. BRAGALONE: THIS IS THE BIG ONE, YOUR HONOR. THIS IS WHAT THEY'RE RELYING ON FOR THE TRUTH OF THE MATTER ASSERTED, AND WE'RE ASKING MR. ALIBHAI, IS HE GOING TO ARGUE TO THE JURY THAT THIS IS EVIDENCE OF WHAT WAS COMMUNICATED TO INTERSIL? IF ALL THIS IS A DRAWING BY DR. DIERSCHKE AT TRIAL, THAT'S VERY DIFFERENT FROM ARGUING THAT THIS SHOULD BE ALLOWED TO BE ARGUED TO THE JURY AS EVIDENCE OF THE TRADE SECRET. THEY HAVE NO OTHER EVIDENCE --

THE COURT: OKAY.

MR. BRAGALONE: -- ON THIS.
THE COURT: LET ME READ A FEW MORE PAGES HERE --
MR. BRAGALONE: YES, YOUR HONOR.
THE COURT: -- SEE IF THERE'S ANY MORE I NEED TO LOOK AT.
MR. BRAGALONE: THE QUESTION THAT MR. ALIBHAI REFERRED TO IS AN PAGE 133 AT LINE 7. AND THE OBJECTION BY MR. KIMBLE IS AT LINE 9.
THE COURT: OKAY. LET ME GET TO THAT.
OKAY, WE'LL TAKE UP WHERE I LEFT OFF ON PAGE 131 OF THE TRANSCRIPT OF FEBRUARY 17, 2015. I HAD READ VERBATIM, ALMOST VERBATIM, PORTIONS OF PAGES 129 THROUGH 131, SO CONTINUING, QUESTION BY MR. ALIBHAI, "I'M GOING TO WAIT UNTIL YOU GET BACK TO YOUR SEAT." HE'S TALKING TO MR. DIERSCHKE. "BUT IS THAT THE 2560 PHOTODIODE STRUCTURE?"
ANSWER: "YES."
QUESTION: "AND THEN JUST FOR MY BENEFIT CAN YOU DRAW THE -- ARE YOU FAMILIAR WITH PHOTODIODE STRUCTURE OF THE 2550?" ANSWER: "CORRECT."
QUESTION: "CAN YOU DRAW THAT CROSS-SECTION FOR ME, PLEASE?" AND I GUESS HE DRAWS IT. MR. ALIBHAI SAYS, "THE 2550, THAT'S A RELEASED PRODUCT, CORRECT, AT THE TIME OF THIS MEETING?" ANSWER: "YES, IT HAD BEEN

RELEASED."

QUESTION: "AND THIS BLOCK WITH THE LITTLE LINES IN IT, CAN YOU DESCRIBE WHAT THAT IS?" ANSWER: "THAT CORRESPONDS TO WHAT I'VE BEEN CALLING AN OPAQUE LAYER, SHIELDING CERTAIN PHOTODIODES, AND THAT WOULD PROTECT METAL."

QUESTION: "OKAY. SO THE STRUCTURE OF THE 2550, DOES THAT LOOK LIKE THE FIGURE IN THE PATENT?" ANSWER: "YES, IT DOES."

QUESTION: "AND WAS THERE A CHANGE BEING MADE FROM THE 2550 TO THE 2560 IN TERMS OF THE LAYOUT OF THE PHOTODETECTOR DIODES?" MR. KIMBLE OBJECTS, LEADING. THE COURT OVERRULES THE OBJECTION.

ANSWER: "THE 2560, AS I MENTIONED BEFORE, BASICALLY CONVERTED THAT METAL SHIELDED DIODE, DIODE 3, TO A D1 VERSION. SO WE HAD ALTERNATING STRIPS OF EXPOSED DIODE AND SHIELDED DIODES."

QUESTION BY MR. ALIBHAI: "SO THIS DESIGN HAD ALTERNATING D1 AND D2?"

ANSWER: "CORRECT."

QUESTION: "DID MR. ASWELL DRAW A SIMILAR CROSS-SECTION OF THE 2560 AT THE MEETING THAT YOU SAW?"

MR. KIMBLE: "OBJECTION, YOUR HONOR, HEARSAY." MR. KIMBLE SAID, "OBJECTION, YOUR HONOR, AGAIN, THIS -- TO ME, THIS GOES TO HEARSAY AGAIN,

WHETHER MR. ASWELL DREW SOMETHING AKIN TO WHAT MR. DIERSCHKE HAS JUST DRAWN HERE IN THE COURTROOM." COURT: "OVERRULED. I DON'T THINK THAT'S HEARSAY. OBSERVING SOMEONE DO SOMETHING IS NOT HEARSAY."

MR. KIMBLE: "I THINK THE QUESTION WAS WHETHER HE ACTUALLY DID IT." THE COURT: "WHETHER THIS WITNESS SAW MR. ASWELL GET UP AND DRAW SOMETHING?" MR. KIMBLE: "NO, WHETHER MR. ASWELL ACTUALLY DID DRAW SOMETHING. AND DRAWING SOMETHING CAN BE A STATEMENT AS WELL. DOESN'T HAVE TO BE JUST A VERBAL COMMUNICATION." THE COURT: "WELL, TRUE."

AND THEN I LOOKED BACK AT THE QUESTION, AND I SAID, "THE QUESTION WAS, DID MR. ASWELL DRAW A SIMILAR CROSS-SECTION OF THE 2560 AT THE MEETING THAT YOU SAW? IT'S A YES OR NO. I'M GOING TO OVERRULE THE OBJECTION. I DON'T THINK THAT'S HEARSAY FOR HIM TO ANSWER IF MR. ASWELL DREW A SIMILAR CROSS-SECTION AT THE MEETING THAT HE SAW. YOU CAN ANSWER YES OR NO." ANSWER: "HE DREW A SIMILAR PICTURE AS TO WHAT I SHOWED UP THERE ON 2560."

THAT'S KIND OF WHERE IT WAS LEFT.

MR. MCCABE: YOUR HONOR --

THE COURT: I TOLD HIM TO ANSWER YES OR NO, AND HE SAID, HE DREW A SIMILAR PICTURE. SO, WHERE DOES THAT LEAVE IT?

MR. MCCABE: YOUR HONOR, MR. LANEY TESTIFIED ON DIRECT EXAMINATION WITHOUT ANY OBJECTION THAT MR. ASWELL DREW PHOTODIODE CHANGE ON THE WHITEBOARD. THAT WAS THE DAY BEFORE. HE TESTIFIED TO IT. HE CAME IN WITHOUT OBJECTION. HE TESTIFIED TO THE 1:1 STRUCTURE. HE TESTIFIED THAT MR. ASWELL, HE'S VERY GOOD IN FRONT OF A WHITEBOARD, AND I THINK BY THE TIME THEY GOT FINISHED, THEY HAD TO ERASE PARTS OF IT TO GET MORE STUFF ON THERE. THAT WAS THE DAY BEFORE THIS TESTIMONY.

THE COURT: YEAH, WELL, THE -- WELL, I'M FOCUSING -- I'M FOCUSING ON DIERSCHKE'S TESTIMONY. IF THERE WAS NO OBJECTION TO MR. LANEY, THEN THERE WAS NO OBJECTION.

MR. MCCABE: YOUR HONOR, IF -- IF MS. CHEN SAYS TO ME THAT MR. ALIBHAI SEXUALLY HARASSED HER YESTERDAY AND I FIRE -- AND SHE EXPLAINS IN DETAIL WHAT IT WAS, AND I FIRE MS. CHEN TOMORROW, SHE SUES US FOR RETALIATION, ALL OF HER COMPLAINT TO ME, WHICH WOULD OTHERWISE BE HEARSAY, COMES IN. IT'S THE SAME THING. IT'S THE SAME. I SAW HIM DO THIS.

MR. BRAGALONE: THAT'S HEARSAY.

THE COURT: WELL, NO, NOT TO SAY YES OR NO.

MR. BRAGALONE: WELL, AND, YOUR HONOR, YOU'LL -- YOU'LL NOTE THAT IN THEIR PRESENTATION, IN

THEIR CLOSING SLIDES, AND THIS IS A DIFFERENT ONE, 618-02, THEY USE THIS VERY SAME DRAWING, AND IT'S ONE OF THREE TECHNICAL TRADE SECRETS THAT THEY HAVE LISTED, TAOS TECHNICAL TRADE SECRETS. SO THEY ARE RELYING ON THIS SAME DRAWING AS THE EVIDENCE -- THE ONLY EVIDENCE OF WHAT WAS SUPPOSEDLY COMMUNICATED TO INTERSIL AT THIS MEETING. THEY -- IF THEY ARE GOING TO SAY THAT THIS IS JUST --

THE COURT: I DON'T KNOW WHAT YOU HAVE THERE. IS THAT A DRAWING THAT MR. DIERSCHKE DREW?

MR. BRAGALONE: IT'S THE SAME THING, YOUR HONOR. LET ME --

THE COURT: OKAY, IT'S THE DRAWING THAT WAS UP ON THE SCREEN EARLIER?

MR. BRAGALONE: YES, BUT IT'S LISTED IN THEIR CLOSING SLIDES. I'LL HAND YOU MY COPY, YOUR HONOR. I'LL GET ANOTHER ONE.

THE COURT: I'LL GET IT.

MR. BRAGALONE: YOU CAN SEE IT THERE. IT'S LISTED AS PART OF THEIR CLOSING SLIDES AS ONE OF THREE TECHNICAL TRADE SECRETS, SO --

THE COURT: WELL, MR. DIERSCHKE OF HIS OWN KNOWLEDGE KNEW THIS.

MR. BRAGALONE: WELL, NO --

THE COURT: HE WAS ON THE STAND.

MR. BRAGALONE: YOUR HONOR, IF THEY'RE JUST GOING -- AND ALL OF THIS HAS TO DO WITH HOW MR. ALIBHAI IS GOING TO RELY ON THIS IN CLOSING. IF HE IS RELYING ON THIS AS TO MAKE AN ARGUMENT THAT THIS IS WHAT WAS DISCLOSED TO INTERSIL, THEN THAT'S IMPROPER. THAT'S CLEARLY RELYING ON HEARSAY.

IF, ON THE OTHER HAND, HE'S GOING TO SAY THAT THIS IS MR. DIERSCHKE'S DRAWING OF A PHOTODIODE, THAT'S DIFFERENT. BUT I THINK THIS ILLUSTRATES THE EXHIBIT YOU HAVE IN FRONT OF YOU, THAT THAT'S NOT WHAT THEY'RE DOING. THEY ARE GOING TO RELY ON THIS TO SAY THAT THIS IS EVIDENCE OF THE DISCLOSURE OF A TRADE SECRET TO INTERSIL, AND THAT'S ENTIRELY IMPROPER, YOUR HONOR. IF MR. ALIBHAI SAYS HE'S NOT GOING TO DO THAT, WE'LL ACCEPT HIS WORD, AND WE'LL WAIT FOR HIS CLOSING. BUT I THINK THAT'S EXACTLY WHAT THEY'RE PLANNING TO DO.

THE COURT: WELL, I ALLOWED MR. DIERSCHKE TO ANSWER YES OR NO TO THE QUESTION, IF MR. ASWELL DREW A SIMILAR CROSS-SECTION AT THE MEETING THAT HE SAW, YOU CAN ANSWER YES OR NO. HE SAID HE DREW A SIMILAR PICTURE.

MR. BRAGALONE: AND AGAIN, WE OBJECTED, YOUR HONOR, BECAUSE THAT -- THAT, AGAIN, IS HEARSAY. BUT THE ISSUE IS, YOUR HONOR HAS JUST RECOGNIZED THAT THERE'S A DIFFERENCE BETWEEN ASKING MR. DIERSCHKE TO

DRAW A PHOTODIODE FROM HIS OWN BACKGROUND AND KNOWLEDGE VERSUS SAYING THAT THIS IS WHAT MR. ASWELL DREW AT A MEETING BACK IN 2004. IT -- AND THIS WAS WHAT WAS COMMUNICATED TO INTERSIL.

THE COURT: OKAY. LET ME ASK MR. ALIBHAI, MR. ALIBHAI, HOW DO YOU WANT TO RESPOND TO THIS? IF -- DO YOU WANT TO ARGUE TO THE JURY THAT MR. ASWELL -- BASED ON DIERSCHKE'S TESTIMONY, MR. ASWELL SAID SOMETHING AT THAT MEETING BY DRAWING A SIMILAR DRAWING? EVEN THOUGH THE DRAWING YOU HAVE IN YOUR -- YOUR CHART HERE, IT LOOKS LIKE MR. DIERSCHKE'S DRAWING. THIS IS MR. DIERSCHKE'S DRAWING, CORRECT?

MR. ALIBHAI: THAT'S CORRECT.

THE COURT: OKAY.

MR. ALIBHAI: SO, I WANT TO USE DR. DIERSCHKE'S DRAWING TO SHOW THE DIFFERENCES IN THE TWO PHOTODIODE STRUCTURES.

THE COURT: ALL RIGHT. BUT YOU WANT TO USE DIERSCHKE'S DRAWING TO ARGUE TO THE JURY THAT ASWELL SAID SOMETHING AT THE JUNE 17, 2004, MEETING; IS THAT RIGHT?

MR. ALIBHAI: NO. I'M GOING TO ASK -- I'M GOING TO -- I'M GOING TO ONLY SAY WHAT THE TESTIMONY WAS, AND THE TESTIMONY WAS, BY MR. LANEY, THAT THIS WAS EXPLAINED TO INTERSIL AND THAT MR. ASWELL PHYSICALLY

DREW THIS ON THE WHITEBOARD. THAT'S PART OF THE TESTIMONY I'M GOING TO RELY ON.

THE COURT: OF MR. LANEY? MR. LANEY'S TESTIMONY?

MR. ALIBHAI: I'M GOING TO USE MR. LANEY'S TESTIMONY AS PART OF THE REASON THAT IS -- CAME IN WITH NO OBJECTION.

THE COURT: OKAY.

MR. ALIBHAI: THE ONLY OTHER THING THAT I MIGHT SAY IS DR. DIERSCHKE TESTIFIED THAT HE SAW A SIMILAR DRAWING, WHICH THE COURT SAID HE COULD ANSWER YES OR NO. THAT'S THE ONLY THING I'M GOING TO SAY.

THE COURT: I DID.

MR. BRAGALONE: AND YOUR HONOR, WE'VE BROUGHT TO THE COURT'S ATTENTION THAT MR. DIERSCHKE CANNOT SAY THAT HE SAW MR. ASWELL DO THAT THING BECAUSE THAT'S A NONVERBAL COMMUNICATION BY AN OUT-OF-COURT DECLARANT, AND MR. LANEY DID NOT HAVE THIS DRAWING. IF MR. LANEY HAD COME UP AND STARTED TO DRAW WHAT HE RECALLED MR. ASWELL DOING -- HE SAID MR. ASWELL USED A WHITEBOARD. HE DIDN'T SAY MR. ASWELL COMMUNICATED THIS INFORMATION VIA A WHITEBOARD. THAT'S WHEN WE OBJECTED. SO, THEY CAN'T -- MR. LANEY NEVER TESTIFIED ABOUT THIS DOCUMENT, YOUR HONOR. THEY CAN'T --

THE COURT: WELL, I'VE READ THE TESTIMONY

HERE, AND MR. DIERSCHKE WAS --

MR. BRAGALONE: IT'S ONLY DIERSCHKE.

THE COURT: MR. DIERSCHKE WAS DRAWING FROM HIS OWN TECHNICAL KNOWLEDGE. HE'S AN INVENTOR OF THIS PATENT.

MR. BRAGALONE: AND, YOUR HONOR, IF THAT'S ALL THEY'RE GOING TO SAY --

THE COURT: SO HE SAID HE'S FAMILIAR WITH IT, SO, THAT IS NOT HEARSAY.

MR. BRAGALONE: I AGREE WITH THAT, YOUR HONOR.

THE COURT: NOW, THIS LATTER EXCHANGE ON PAGES 133 AND 134, I UNDERSTAND HOW YOU CAN ARGUE THAT, THAT HE CAN'T ANSWER YES OR NO. USUALLY, YES OR NO QUESTIONS ARE NOT HEARSAY. I DON'T KNOW. ALL I CAN TELL YOU IS I'VE GOT TO STICK WITH MY RULINGS. I CAN'T CHANGE RULINGS AT THE BEGINNING OF FINAL ARGUMENT HERE.

MR. BRAGALONE: WILL YOUR HONOR TELL EITHER THE JURY OR TELL MR. ALIBHAI THAT HE CANNOT SAY THAT THIS IS WHAT WAS COMMUNICATED TO INTERSIL? THAT'S THE HARM HERE THAT WE'RE TRYING TO AVOID BEFORE CLOSING ARGUMENT.

THE COURT: WELL, APPARENTLY, HE CAN, BECAUSE MR. LANEY WAS THERE.

MR. BRAGALONE: NO, NO, MR. LANEY DID NOT

EVER SPONSOR THIS. THIS DRAWING WAS NEVER BROUGHT TO MR. LANEY'S ATTENTION.

THE COURT: WAS MR. LANEY AT THE JUNE 17, 2004, MEETING?

MR. ALIBHAI: YES, YOUR HONOR.

MR. BRAGALONE: YES, AND ALL HE SAID IS THAT -- IS THAT MR. ASWELL DREW SOMETHING ON A WHITEBOARD. HE DIDN'T -- HE DIDN'T EVER SPONSOR THIS. THEY CAN'T USE LANEY'S TESTIMONY BEFORE THIS WAS EVER CREATED IN THE COURTROOM TO SAY THAT THIS IS WHAT MR. LANEY SAW.

THE COURT: OKAY.

MR. BRAGALONE: MR. LANEY COULD HAVE TAKEN THE STAND AGAIN AND SAID, YES, THAT'S WHAT I SAW, AND WE WOULD OBJECT TO THAT.

THE COURT: I DON'T REMEMBER EVERYTHING MR. LANEY SAID. DO YOU CONTEND MR. LANEY SAID THAT HE -- THAT HE KNOWS OF HIS OWN PERSONAL KNOWLEDGE THAT SOME SORT OF A STRUCTURE -- DIODE STRUCTURE WAS COMMUNICATED TO INTERSIL AT THE MEETING? I DON'T REMEMBER WHAT YOU SAID EARLIER, MR. MCCABE.

MR. ALIBHAI: YES, WE TALKED ABOUT THE 1:1 RATIO OF THE DIODE STRUCTURE, AND THAT IT WAS EXPLAINED TO INTERSIL. ANSWER: "IN DEPTH, YES." "WHO DID THAT?" "MR. ASWELL." "AND HOW DID HE PHYSICALLY DO THAT?"

"HE'S VERY GOOD IN FRONT OF A WHITEBOARD."

THE COURT: THIS IS MR. LANEY'S TESTIMONY?

MR. ALIBHAI: YES, WITHOUT OBJECTION.

THE COURT: WITHOUT OBJECTION.

MR. ALIBHAI: PAGES 163 AND 164.

THE COURT: WELL, I THINK MR. ALIBHAI CAN ARGUE THAT.

MR. BRAGALONE: AND, YOUR HONOR, WE'VE GOT NO PROBLEM AS LONG AS THEY DON'T USE THIS.

THE COURT: OKAY.

MR. BRAGALONE: BECAUSE THIS IS MR. DIERSCHKE. MR. LANEY --

THE COURT: I UNDERSTAND WHAT YOU'RE ASKING ME. LET ME HEAR FROM MR. ALIBHAI SO I CAN MAKE A RULING ON THIS. MR. ALIBHAI, THE REQUEST BY MR. BRAGALONE IS THAT YOU NOT USE THE DRAWING BY -- WELL, HE DREW IT OF HIS OWN PERSONAL KNOWLEDGE. WHAT MR. BRAGALONE IS ASKING IS THAT YOU NOT ARGUE THAT DIERSCHKE SAW ASWELL DRAW SOMETHING SIMILAR. I DID LET HIM ANSWER THAT QUESTION DURING TRIAL.

MR. BRAGALONE: AND THAT WAS OVER OUR OBJECTION, YOUR HONOR.

THE COURT: WHETHER THAT IS -- WAS INCORRECT, MR. BRAGALONE MAY HAVE A GOOD ARGUMENT THERE. I DON'T KNOW. I'D HAVE TO LOOK AT IT A LITTLE CLOSER.

IT WAS A YES OR NO TYPE QUESTION, DID YOU SEE SOMEONE ELSE DO SOMETHING SIMILAR, DID YOU OBSERVE SOMEONE ELSE PHYSICALLY DO SOMETHING, IS THAT HEARSAY?

MR. BRAGALONE: AND YOUR HONOR --

THE COURT: WELL --

MR. BRAGALONE: THIS IS ALL CURED IF YOU INSTRUCT MR. ALIBHAI THAT HE CANNOT USE THIS FOR THE PROPOSITION THAT --

THE COURT: I KNOW WHAT YOU'RE ASKING.

MR. BRAGALONE: -- THIS IS WHAT MR. ASWELL COMMUNICATED.

THE COURT: I NEED TO HEAR FROM MR. ALIBHAI AND SEE IF HE CAN LIMIT HIS ARGUMENT TO WHAT MR. LANEY SAID ABOUT WHAT WAS DONE AT THE MEETING RATHER THAN WHAT MR. DIERSCHKE -- RATHER THAN WHETHER MR. DIERSCHKE OBSERVED ASWELL DRAW SOMETHING SIMILAR.

MR. ALIBHAI: I'M ONLY GOING TO SAY WHAT THAT QUESTION AND ANSWER SAID, YOUR HONOR. DID YOU SEE SOMEONE DRAW SOMETHING SIMILAR? NO DIFFERENT THAN EVERY CAR ACCIDENT WITNESS WHO COMES IN AND TRIES TO DRAW SOMETHING AND SAYS, THIS REPRESENTS WHAT I SAW; NO DIFFERENT THAN WHEN PEOPLE SAY, IT LOOKED LIKE THE CAR WAS GOING FAST TO ME; NO DIFFERENT THAN WHEN PEOPLE SAY, I SAW A RED LIGHT. HE'S -- HE'S GOING TO TESTIFY AS TO WHAT HE SAW, AND -- AND THE ONLY THING I ASKED HIM

WAS -- AND YOUR HONOR SAID I COULD ASK HIM A YES OR NO QUESTION. DID YOU SEE SOMEONE DRAW SOMETHING SIMILAR? AND HE SAID, YES I DID.

THE COURT: OKAY. WELL --

MR. ALIBHAI: THAT'S WHAT I'M GOING TO ARGUE.

THE COURT: OKAY. NOW ON MARCH 4TH, I HAVE AN OBJECTION TO THIS TESTIMONY BACK ON FEBRUARY 17TH.

MR. ALIBHAI: IT'S UNTIMELY, YOUR HONOR. IT'S AFTER THE CLOSE OF EVIDENCE.

MR. BRAGALONE: NO, IT'S NOT UNTIMELY. WE MADE THE OBJECTION AT THAT TIME.

THE COURT: YOU DID MAKE THE OBJECTION.

MR. ALIBHAI: AND IT WAS OVERRULED. IT'S IN EVIDENCE.

THE COURT: AND I OVERRULED IT.

MR. ALIBHAI: IT CAN'T COME OUT OF EVIDENCE NOW.

MR. BRAGALONE: WHAT'S PREJUDICIAL ABOUT THIS, YOUR HONOR, IS IF THEY ARE RELYING ON IT AS EVIDENCE OF THIS BEING COMMUNICATED TO INTERSIL. THAT QUESTION WAS NEVER ASKED OF THE WITNESS. IT -- THAT QUESTION IS WHAT HE'S ATTEMPTING TO NOW USE THIS --

THE COURT: WELL, NO, IT WAS ASKED WHETHER HE SAW ASWELL DRAW SOMETHING SIMILAR TO THIS, SO --

MR. BRAGALONE: AND, YOUR HONOR --

THE COURT: -- THE SIMILARITY ISSUE ALSO GOES TO THE WEIGHT OF THIS DRAWING.

MR. BRAGALONE: IT DOES, IT DOES, AND THAT'S WHY IT'S HEARSAY. AND, YOUR HONOR, IF HE IS GOING --

THE COURT: OKAY. YOU'LL -- YOU KNOW, I CAN'T CHANGE RULINGS IN THE MIDST OF TRIAL RIGHT HERE AT FINAL ARGUMENT.

MR. BRAGALONE: WELL, ACTUALLY, BEFORE IT GOES TO THE JURY IS THE TIME WHEN IT CAN BE DONE.

THE COURT: NO, IT CAN'T, BECAUSE NOW MR. ALIBHAI DOESN'T HAVE THE OPPORTUNITY TO RE-ASK THE QUESTION OF MR. DIERSCHKE.

MR. BRAGALONE: WELL, BUT THAT WAS HIS CHOICE IN PROCEEDING TO ASK IT IN THE FIRST PLACE WHEN WE OBJECTED. IF WE WAIVED AN OBJECTION, THAT'S ONE THING.

THE COURT: IF HE RELIES ON MY RULINGS, THEN, YOU KNOW, IT WOULD BE THE SAME CASE WITH YOU, MR. BRAGALONE, IF YOU RELY ON MY RULINGS. IF -- YOU KNOW, YOU'LL JUST HAVE TO RAISE THIS AT ANOTHER LEVEL. I CAN'T IMAGINE THAT THIS ONE RULING WOULD AFFECT THE ENTIRE TRIAL, BUT I CANNOT CHANGE THIS RULING, AND I DON'T EVEN KNOW, WITHOUT LOOKING AT IT A LITTLE MORE

CAREFULLY, WHETHER IT IS IMPROPER TO ALLOW DIERSCHKE TO SAY YES OR NO AS TO WHETHER HE SAW SOMEONE DO SOMETHING AT A MEETING.

MR. BRAGALONE: YOUR HONOR, IF HE CAN'T DO IT DIRECTLY, IF HE CAN'T SAY, HERE'S WHAT I SAW MR. ASWELL -- HERE'S WHAT MR. ASWELL SAID AT THE MEETING, YOU -- YOU SUSTAINED THAT OBJECTION. THEN, HE CAN'T -- IF HE CAN'T ALSO SAY, THIS IS WHAT MR. ASWELL DREW AT THE MEETING, THEN HE CAN'T, HIMSELF, DRAW SOMETHING AND ANSWER A QUESTION, IS THAT LIKE WHAT YOU SAW MR. ASWELL DRAW AT THE MEETING? IT'S THE SAME THING.

THE COURT: I UNDERSTAND YOUR ARGUMENT. I UNDERSTAND YOUR ARGUMENT.

MR. BRAGALONE: HE'S BACK DOORING IT.

THE COURT: BUT I'VE GOT TO STICK WITH MY RULINGS. I CAN'T CHANGE THE LANDSCAPE AT THIS POINT.

MR. BRAGALONE: WELL, BUT YOU CAN PREVENT HIM --

MR. ALIBHAI: YOUR HONOR --

MR. BRAGALONE: EXCUSE ME.

THE COURT: NO, I DON'T WANT TO HEAR ANY MORE ARGUMENT.

LET'S SEE. ARE YOU READY, MR. ALIBHAI?

MR. ALIBHAI: YES, YOUR HONOR, WE'RE READY.

MR. MCCABE: MAY I APPROACH?
MR. BRAGALONE: WE HAVE TWO MORE OBJECTIONS TO THE SLIDES, BRIEFLY, YOUR HONOR.
MR. MCCABE: TO GET THE PAGE BACK, BRIEFLY, YOUR HONOR, MAY I APPROACH? IT WAS 134.
MR. BRAGALONE: AND I'M SORRY, MY REALTIME ISN'T FOLLOWING. DID YOUR HONOR RULE ON THAT?
THE COURT: I'LL -- MY RULING IS THAT THE FIRST QUESTION THAT YOU OBJECTED TO WAS NOT HEARSAY BECAUSE DIERSCHKE WAS DRAWING FROM HIS OWN KNOWLEDGE. WHAT MR. ALIBHAI HAS IN HIS DEMONSTRATIVES, MY SECOND RULING IS THAT, I GUESS, I'M NOT GOING TO CHANGE MY EARLIER RULINGS THAT WERE MADE ON FEBRUARY 17TH.
MR. BRAGALONE: AND ARE -- WILL YOU --
THE COURT: I CAN'T CHANGE THEM NOW. IT WOULDN'T BE FAIR.
MR. BRAGALONE: I UNDERSTAND, BUT I'M MAKING THE OBJECTION NOW TO THE INCLUSION OF THE SLIDES IF THEY INTEND TO RELY ON --
THE COURT: OH, YOUR OBJECTION'S OVERRULED.
MR. BRAGALONE: YOUR HONOR, OUR NEXT OBJECTION IS TO A SLIDE ID 643 -- IT'S HARD TO MAKE OUT. YES, IF WE CAN PUT IT -- THERE'S NO ELMO THERE.
THE COURT: OKAY. MORE OBJECTIONS?
MR. BRAGALONE: YES, YOUR HONOR, BRIEFLY,

THEY'RE GOING TO PUT THIS UP ON THE PROJECTOR. SO, YOUR HONOR, THIS IS A SLIDE THAT SAYS, WHERE IS OLEG STECIW, RAJEEVA LAHRI, AND XIJIAN LIN. NONE OF THESE ARE EMPLOYEES OF INTERSIL. INTERSIL HAS NO CONTROL OVER THESE INDIVIDUALS. IT IS IMPROPER TO COMMENT UPON THE FAILURE TO BRING A WITNESS TO TRIAL IF THE WITNESS IS NOT WITHIN THE CONTROL OF A PARTY.

I WOULD CONTRAST THIS, FOR EXAMPLE, WITH MR. ASWELL. MR. ASWELL IS IN PLAINTIFF'S CONTROL. THEY COULD HAVE BROUGHT HIM TO TRIAL BUT DIDN'T. THESE INDIVIDUALS ARE FORMER EMPLOYEES. THE LAW IN THE FIFTH CIRCUIT AND IN NUMEROUS OTHER CIRCUITS -- THIS IS OFTEN REFERRED TO AS THE MISSING WITNESS RULE, AND WHETHER IT'S PROPER TO COMMENT UPON THE FAILURE OF A PARTY TO BRING A WITNESS TO TRIAL.

THE --

THE COURT: DO YOU HAVE A CASE YOU CAN CITE?

MR. BRAGALONE: YES, YOUR HONOR.

MR. ALIBHAI: YOUR HONOR, I'LL WITHDRAW THE SLIDE.

THE COURT: OKAY.

MR. BRAGALONE: OKAY.

MR. ALIBHAI: REMOVE THE SLIDE, PLEASE.

THE COURT: WHAT'S THE NEXT ONE?

MR. BRAGALONE: AND WE WOULD ALSO ASK THAT MR. ALIBHAI BE PRECLUDED FROM ARGUING TO THE JURY IN CLOSING THAT INTERSIL FAILED TO BRING FORMER EMPLOYEES. HE CAN ARGUE ALL DAY ABOUT CURRENT EMPLOYEES THAT ARE WITHIN INTERSIL'S CONTROL, BUT FORMER EMPLOYEES AREN'T WITHIN INTERSIL'S CONTROL.

THE COURT: MR. ALIBHAI?

MR. ALIBHAI: WELL, THE ISSUE I HAVE WITH THAT, YOUR HONOR, IS ONE OF THEIR SLIDES IS GOING TO TALK ABOUT THEIR FORMER EMPLOYEES, INCLUDING MR. LAHRI. THAT'S MR. LAHRI ON THE BOTTOM LEFT, ISN'T IT?

MR. BRAGALONE: YES, YOUR HONOR. AND WE --

MR. ALIBHAI: THEY'RE GOING TO MAKE AN ARGUMENT ABOUT THEIR FORMER EMPLOYEES SHOWING UP HERE AND WHAT THEY SAID AND DIDN'T SAY AND WHAT THEY HAVE TO GAIN AND WHAT THEY DON'T HAVE TO GAIN. I'M ENTITLED TO SAY OF THOSE PEOPLE, IF THEY'RE GOING TO MAKE AN ARGUMENT ABOUT THEIR FORMER EMPLOYEES -- I DON'T EVEN KNOW WHO'S ON THE BOTTOM RIGHT. IS THAT DAVID FOGG?

MR. BRAGALONE: NO, IT'S RICH BEYER.

MR. ALIBHAI: SO, MR. LAHRI AND MR. BEYER, IF THEY'RE GOING TO MAKE COMMENTS ABOUT THEIR FORMER EMPLOYEES, THEN I'M ENTITLED TO ASK WHY THEY DIDN'T SHOW UP AND TESTIFY.

MR. BRAGALONE: AND, YOUR HONOR, OKAY,

FIRST OF ALL, IT'S ONLY IMPROPER IF THE OPPOSING PARTY IS COMMENTING ON THE OTHER PARTY'S FAILURE TO BRING SOMEBODY TO TRIAL, BECAUSE THAT IS MADE OFTEN IN CLOSING ARGUMENT TO SUGGEST THAT THE JURY SHOULD DRAW AN INFERENCE THAT THAT PERSON'S TESTIMONY WOULD HAVE BEEN UNFAVORABLE TO THEM. TO MR. ALIBHAI'S SPECIFIC POINT, WE'LL TAKE MR. LAHRI AND MR. BEYER OFF THE BOTTOM OF THAT SLIDE AND I WON'T MENTION THEM. SO, I'M NOT TRYING TO ASK SOMETHING DIFFERENT THAT I WOULDN'T ALSO DO MYSELF.

THE COURT: OKAY.

MR. ALIBHAI: AND MR. ASWELL WAS OUT OF THE COUNTRY AND NOT AVAILABLE. THEY SHOULDN'T BE ABLE TO COMMENT ON HIS ABILITY TO SHOW UP EITHER.

MR. BRAGALONE: HE -- HE'S THEIR EMPLOYEE, YOUR HONOR. WE'RE ABSOLUTELY ENTITLED TO DO THAT.

MR. ALIBHAI: WELL, DR. LIN'S AN EMPLOYEE OF INTERSIL TOO. I MEAN, THERE'S NO POINT IN GETTING INTO WHO'S AN EMPLOYEE AND WHO'S NOT.

MR. BRAGALONE: NO, HE'S NOT.

MR. KIMBLE: NOT ANYMORE.

MR. ALIBHAI: WHEN DID HE STOP BEING AN EMPLOYEE?

MR. BRAGALONE: SEVERAL --

MR. KIMBLE: YEARS AGO.

MR. BRAGALONE: YEARS AGO. NONE OF THESE INDIVIDUALS ARE EMPLOYEES OF INTERSIL.

THE COURT: ALL RIGHT. SO YOU'RE TAKING OFF THE PICTURES AT THE BOTTOM OF THE --

MR. BRAGALONE: THE BOTTOM TWO, YES, YOUR HONOR.

THE COURT: WHATEVER EXHIBIT THIS IS. LOOKED LIKE IT WAS PAGE 108.

MR. ALIBHAI: THAT'S RIGHT, YOUR HONOR.

MR. BRAGALONE: WE'RE GOING TO TAKE OFF THE BOTTOM TWO. WE'RE ONLY GOING TO TALK ABOUT THE ONES THAT APPEARED AT TRIAL.

THE COURT: WHAT OTHER OBJECTIONS DO YOU HAVE?

MR. BRAGALONE: AS I UNDERSTAND IT, MR. ALIBHAI'S NOT GOING TO MAKE THAT ARGUMENT?

THE COURT: WELL, I DON'T KNOW WHAT HE'S GOING TO ARGUE, BUT HE'S GOING TO WITHDRAW THE SLIDES.

MR. BRAGALONE: I UNDERSTAND, BUT I'M ALSO ASKING THAT THE COURT ORDER THAT HE SHOULD NOT MAKE THE ARGUMENT THAT INTERSIL FAILED TO BRING TO TRIAL ANY WITNESS OVER WHICH IT DOESN'T HAVE CONTROL.

THE COURT: THAT SOUNDS FAIR TO ME, MR. ALIBHAI.

MR. ALIBHAI: I WASN'T GOING TO DO THAT,

YOUR HONOR.

MR. BRAGALONE: VERY GOOD. THE LAST ONE, YOUR HONOR, IS --

MR. ALIBHAI: BUT IF THEY OPEN THE DOOR, I RESERVE THE RIGHT TO DO THAT.

THE COURT: OPEN THE DOOR BY ARGUING THAT YOU DIDN'T BRING SOME OF YOUR -- YOUR --

MR. ALIBHAI: IF THEY DO SOMETHING THAT OPENS THE DOOR, I'LL COME TALK TO YOU ABOUT IT, BUT I WANT TO BE CLEAR THAT IF THEY OPEN THE DOOR, I HAVE THE RIGHT TO TALK ABOUT IT.

THE COURT: AND THE WAY THEY WOULD OPEN THE DOOR IS ARGUING THAT YOU DIDN'T BRING FORMER EMPLOYEES HERE TO TESTIFY?

MR. ALIBHAI: I DON'T KNOW WHAT THEY'LL DO, YOUR HONOR, BUT WE'LL WAIT TO SEE WHAT THOSE 90 MINUTES --

MR. BRAGALONE: YOUR HONOR, I'M NOT GOING TO MAKE ANY ARGUMENTS ABOUT FORMER EMPLOYEES. I WILL ARGUE ABOUT MR. ASWELL --

THE COURT: WELL, BOTH OF YOU NEED TO STICK TO THE RECORD, OKAY? NO HITTING BELOW THE BELT HERE, NO PERSONALITIES, NOTHING LIKE THAT. I WANT TO SAY ALSO THAT YOU NEED TO ARGUE FROM THE PODIUM. DO NOT WANDER OVER HERE BY THE JURY. STAY AT THE PODIUM.

MR. ALIBHAI: YES, SIR.
THE COURT: WHAT ELSE?
MR. BRAGALONE: LAST ONE, YOUR HONOR, IS ID 949.
THE COURT: YOU'RE MAKING REFERENCES TO DOCUMENTS I DON'T HAVE.
MR. ALIBHAI: IT'S ON THE SCREEN, YOUR HONOR.
MR. BRAGALONE: IT'S AN EXHIBIT ON THE SCREEN, YOUR HONOR. FRANKLY, YOUR HONOR, I'M NOT SURE WHAT THE RELEVANCE IS OF THIS. WE'RE NOT SURE HOW IT'S GOING TO BE USED --
THE COURT: PROBABLY GOES TO EXEMPLARY DAMAGES.
MR. ALIBHAI: THAT'S CORRECT, YOUR HONOR. THIS IS FROM A DOCUMENT IN EVIDENCE.
THE COURT: YES, IT IS.
MR. ALIBHAI: WHAT'S NOT IN EVIDENCE AND THEY -- I'M SURPRISED THAT MR. BRAGALONE'S COMPLAINING ABOUT THIS. HIS OWN SLIDE SAYS, AMS HAS A MARKET CAP OF 2.7 BILLION COMPARED TO 2 BILLION FOR INTERSIL. HIS SLIDE.
THE COURT: I THINK NET WORTH IS -- IS NET WORTH NOT APPROPRIATE?
MR. ALIBHAI: IT'S ONE OF THE FACTORS YOU

CONSIDER FOR EXEMPLARY DAMAGES. IT'S IN THE COURT'S INSTRUCTIONS FROM THE PATTERN JURY CHARGE.

THE COURT: YEAH.

MR. BRAGALONE: YOUR HONOR, I'M GOING TO BRING UP SOMETHING ABOUT AMS IF THIS IS A KIND OF TIT FOR TAT. THAT'S FAIR. I'LL WITHDRAW OUR OBJECTION.

MR. ALIBHAI: IT'S NOT TIT FOR TAT, YOUR HONOR. IT'S A RELEVANT FACTOR IN EXEMPLARY DAMAGES.

THE COURT: I MEAN, THERE'S NO OBJECTION TO THIS. THIS DOCUMENT YOU HAVE ON THE SCREEN IS IN EVIDENCE WITHOUT OBJECTION. I THINK THAT'S WHAT HAPPENED.

MR. ALIBHAI: THAT'S CORRECT. I DON'T THINK MR. BRAGALONE WAS HERE FOR THAT.

MR. BRAGALONE: THAT'S FINE, YOUR HONOR.

THE COURT: ANYTHING ELSE?

MR. BRAGALONE: NO, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. I THINK WE'RE READY TO GO.

MR. ALIBHAI: YOUR HONOR, CAN WE TAKE A 2-MINUTE BREAK?

THE COURT: OKAY, SURE. 5 MINUTES.

MR. ALIBHAI: THANK YOU, YOUR HONOR.

(BREAK TAKEN FROM 10:17 A.M. TO 10:21 A.M.)

THE COURT: KEEP YOUR SEATS, THANK YOU.

JUST KEEP YOUR SEATS.

I THINK WE'RE WAITING FOR MR. KIMBLE. OKAY. MR. KIMBLE IS HERE. ALL RIGHT, EVERYONE'S HERE AND READY. SO, LET'S BRING IN THE JURY.

(JURY PRESENT)

THE COURT: ALL RIGHT. PLEASE BE SEATED. MEMBERS OF THE JURY, GOOD MORNING TO YOU.

JUROR: GOOD MORNING.

THE COURT: THANK YOU FOR YOUR PATIENCE. I CAN ASSURE YOU THAT I DO NOT BRING JURIES BACK BEFORE I THINK WE'LL BE READY FOR YOU, BUT SOMETIMES THE COURT CANNOT ANTICIPATE ISSUES THAT WILL ARISE AT THE BEGINNING OF THE DAY, AND SOMETIMES THE PARTIES CANNOT ANTICIPATE THAT EITHER.

THEY HAVE WORKED COOPERATIVELY TO EXCHANGE EXHIBITS, AND SOMETIMES, BECAUSE WE'VE BEEN WORKING INTO THE NIGHT, BOTH LAST NIGHT AND THE NIGHT BEFORE, THE LAWYERS AND THE COURT, IN ORDER TO GET THIS CASE READY FOR FINAL ARGUMENTS, SOMETIMES THEY HAVE TO EXCHANGE INFORMATION LATE AT NIGHT, AND THOSE -- AND ANY OBJECTIONS CANNOT BE HEARD UNTIL THE NEXT MORNING. AND SOMETIMES THEY TAKE A WHILE.

SO ANYWAY, WE'RE READY TO PROCEED AT THIS TIME. YOU HAVE ON YOUR CHAIRS THERE A COPY OF THE COURT'S INSTRUCTIONS TO YOU. AS YOU'LL SEE, IN TOTAL,

THE INSTRUCTIONS AND THE QUESTIONS THAT I POSED TO YOU ARE ABOUT 45 PAGES. THE LAW REQUIRES THAT I READ THESE INSTRUCTIONS TO YOU, SO I'M GOING TO READ THE INSTRUCTIONS FIRST. YOU CAN FOLLOW ALONG ON YOUR COPIES. YOU CAN TAKE THOSE COPIES WITH YOU BACK TO THE JURY ROOM WHEN YOU START YOUR DELIBERATIONS. MY INSTRUCTIONS TO YOU ARE ON THE LAW.

AGAIN, AS I TOLD YOU AT THE BEGINNING OF THE TRIAL, YOU ARE THE JUDGES OF THE FACTS. YOU ARE THE ONES WHO EVALUATE THE WITNESSES AND ALL OF THE DOCUMENTS THAT YOU'VE SEEN ON THE SCREEN, AND SO YOU'LL BE THE JUDGES OF THE FACTS, BUT I'LL INSTRUCT YOU ON THE LAW HERE IN JUST A MOMENT.

BEFORE I DO THAT, LET ME SAY THAT THE -- THE LAWYERS HAVE AGREED TO A FINAL ARGUMENT TIME OF 90 MINUTES PER SIDE. OBVIOUSLY, WE'RE GETTING STARTED AT 10:30. IT'LL TAKE ME AN HOUR, MAYBE MORE THAN AN HOUR, TO READ THESE INSTRUCTIONS TO YOU. THEN, I DIDN'T VISIT WITH THE LAWYERS ABOUT THIS BEFORE YOU CAME OUT, BUT WE'LL START THE PLAINTIFF'S OPENING ARGUMENT. THE PLAINTIFF, HAVING THE BURDEN OF PROOF, THE PLAINTIFF BEING TAOS, HAVING THE BURDEN OF PROOF, HAS THE RIGHT TO OPEN AND CLOSE FINAL ARGUMENTS.

NOW, THE DEFENDANT HAS THE BURDEN OF PROOF ON SOME OF ITS AFFIRMATIVE DEFENSES, WHICH I'LL VISIT

WITH YOU ABOUT IN THE COURT'S INSTRUCTIONS, BUT THE PLAINTIFF, OBVIOUSLY, HAS THE BURDEN OF PROOF ON THE FOUR CLAIMS THAT ARE BEFORE YOU, PATENT INFRINGEMENT, TRADE SECRET MISAPPROPRIATION, BREACH OF CONTRACT, AND TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS. SO THE PLAINTIFF HAS THE RIGHT TO OPEN AND CLOSE FINAL ARGUMENTS.

SO, YOU WILL HEAR FROM MR. ALIBHAI AND MR. MCCABE IN THEIR OPENING ARGUMENT. THEY'LL USE PART OF THEIR 90 MINUTES. THEN, MR. BRAGALONE -- AND THIS MAY BE AFTER LUNCH -- WILL MAKE HIS FULL ARGUMENT TO YOU, AND THEN MR. ALIBHAI AND MR. MCCABE CAN USE THEIR REMAINING TIME FOR CLOSING ARGUMENTS. BUT EACH SIDE WILL HAVE A TOTAL OF UP TO 90 MINUTES FOR FINAL ARGUMENTS. IT'S BEEN A LONG TRIAL. I THINK AN HOUR AND A HALF PER SIDE IS FAIR.

BEFORE I READ THE INSTRUCTIONS TO YOU, I WANT TO TELL YOU THAT YOU'VE -- DURING THE COURSE OF THE TRIAL, YOU MAY HAVE HEARD EVIDENCE THAT THIS CASE WAS FILED IN NOVEMBER OF 2008. WE BEGAN THE TRIAL ON FEBRUARY 9TH OF 2015, SO IT'S BEEN ABOUT SIX YEARS, A LITTLE OVER SIX YEARS SINCE THE LAWSUIT WAS FILED TO THE TRIAL. I WANT TO TELL YOU THAT BOTH PARTIES IN THIS CASE, TAOS AND INTERSIL, HAVE BEEN DILIGENT IN PREPARING THIS CASE FOR TRIAL. THREE-AND-A-HALF YEARS OF THAT

SIX YEARS WAS THE RESULT OF THE COURT DELAYING AND ISSUING ITS CLAIM CONSTRUCTION ORDER.

THE CLAIM CONSTRUCTION HEARING IN THIS CASE ON THE PATENT ISSUES WAS HELD ON NOVEMBER 17TH OF 2009. THE COURT, BEING ME, ISSUED THE CLAIM CONSTRUCTION ORDER IN JUNE OF 2013. THE ORDER IS 30 PAGES LONG. IT IS -- IT'S INVOLVED. IT'S A LOT OF TECHNICAL INFORMATION. I HAVE FOUND IN THIS JOB THAT BASED UPON THE CASE LOAD THAT I HAVE, THAT SOMETIMES I HAVE TO CHOOSE BETWEEN TIMELINESS AND THOROUGHNESS. I DON'T LIKE THE CHOICE, BUT I CHOOSE THOROUGHNESS OVER TIMELINESS, AND THAT MEANS THAT THERE ARE TIMES WHEN, IN COMPLEX MATTERS THAT REQUIRE HOURS AND HOURS TO WORK ON THAT I DON'T HAVE, SOMETIMES, I SIMPLY HAVE TO PUT MATTERS ON THE SHELF UNTIL I CAN GET TO THEM.

SO, I WANT YOU TO KNOW -- I DON'T WANT YOU TO THINK THAT BECAUSE IT'S BEEN SIX YEARS SINCE FILING THE LAWSUIT UNTIL THIS TRIAL THAT SOMEHOW THE PARTIES HAVE BEEN NEGLECTING PREPARING THE CASE FOR TRIAL. THEY HAVE NOT. THREE-AND-A-HALF YEARS OF THAT WAS THE COURT'S OWN DELAY IN ISSUING THE CLAIM CONSTRUCTION ORDER. SO, I WANTED TO TELL YOU THAT.

MEMBERS OF THE JURY, I'M GOING TO READ THE COURT'S INSTRUCTIONS TO YOU, AND YOU CAN FOLLOW ALONG.

MEMBERS OF THE JURY, IT IS MY DUTY AND

RESPONSIBILITY TO INSTRUCT YOU ON THE LAW YOU ARE TO APPLY IN THIS CASE. THE LAW CONTAINED IN THESE INSTRUCTIONS IS THE ONLY LAW YOU MAY FOLLOW. IT IS YOUR DUTY TO FOLLOW WHAT I INSTRUCT YOU THE LAW IS, REGARDLESS OF ANY OPINION THAT YOU MIGHT HAVE AS TO WHAT THE LAW OUGHT TO BE.

IF I HAVE GIVEN YOU THE IMPRESSION DURING THE TRIAL THAT I FAVOR EITHER PARTY, YOU MUST DISREGARD THAT IMPRESSION. IF I HAVE GIVEN YOU THE IMPRESSION DURING THE TRIAL THAT I HAVE AN OPINION ABOUT THE FACTS OF THIS CASE, YOU MUST DISREGARD THAT IMPRESSION. YOU ARE THE SOLE JUDGES OF THE FACTS OF THIS CASE. OTHER THAN MY INSTRUCTIONS TO YOU ON THE LAW, YOU SHOULD DISREGARD ANYTHING I MAY HAVE SAID OR DONE DURING THE TRIAL IN ARRIVING AT YOUR VERDICT.

YOU SHOULD CONSIDER ALL OF THE INSTRUCTIONS ABOUT THE LAW AS A WHOLE AND REGARD EACH INSTRUCTION IN LIGHT OF THE OTHERS, WITHOUT ISOLATING A PARTICULAR STATEMENT OR PARAGRAPH.

THE TESTIMONY OF THE WITNESSES AND OTHER EXHIBITS INTRODUCED BY THE PARTIES CONSTITUTE THE EVIDENCE. THE STATEMENTS OF COUNSEL ARE NOT EVIDENCE; THEY ARE ONLY ARGUMENTS. IT IS IMPORTANT FOR YOU TO DISTINGUISH BETWEEN THE ARGUMENTS OF COUNSEL AND THE EVIDENCE ON WHICH THOSE ARGUMENTS REST. WHAT THE

LAWYERS SAY OR DO IS NOT EVIDENCE. YOU MAY, HOWEVER, CONSIDER THEIR ARGUMENTS IN LIGHT OF THE EVIDENCE THAT HAS BEEN ADMITTED AND DETERMINE WHETHER THE EVIDENCE ADMITTED IN THIS TRIAL SUPPORTS THE ARGUMENTS. YOU MUST DETERMINE THE FACTS FROM ALL THE TESTIMONY THAT YOU HAVE HEARD AND THE OTHER EVIDENCE SUBMITTED. YOU ARE THE JUDGES OF THE FACTS, BUT IN FINDING THOSE FACTS, YOU MUST APPLY THE LAW AS I INSTRUCT YOU.

YOU ARE REQUIRED BY LAW TO DECIDE THE CASE IN A FAIR, IMPARTIAL, AND UNBIASED MANNER, BASED ENTIRELY ON THE LAW AND ON THE EVIDENCE PRESENTED TO YOU IN THE COURTROOM. YOU MAY NOT BE INFLUENCED BY PASSION, PREJUDICE, OR SYMPATHY YOU MIGHT HAVE FOR THE PLAINTIFF OR THE DEFENDANT IN ARRIVING AT YOUR VERDICT. A CORPORATION AND ALL OTHER PERSONS ARE EQUAL BEFORE THE LAW AND MUST BE TREATED AS EQUALS IN A COURT OF JUSTICE.

THE PLAINTIFF HAS THE BURDEN OF PROVING ITS CASE BY A PREPONDERANCE OF THE EVIDENCE. TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE MEANS TO PROVE SOMETHING IS MORE LIKELY SO THAN NOT SO. IF YOU FIND THAT THE PLAINTIFF HAS FAILED TO PROVE ANY ELEMENT OF ITS CLAIM BY A PREPONDERANCE OF THE EVIDENCE, THEN IT MAY NOT RECOVER ON THAT CLAIM.

IN THIS CASE, THE DEFENDANT ASSERTS SEVERAL AFFIRMATIVE DEFENSES. EVEN IF THE PLAINTIFF PROVES ITS

CLAIMS BY A PREPONDERANCE OF THE EVIDENCE, THE DEFENDANT CAN PREVAIL IN THIS CASE IF IT PROVES AN AFFIRMATIVE DEFENSE BY THE APPROPRIATE STANDARD OF PROOF AS EXPLAINED IN THESE INSTRUCTIONS.

WHEN MORE THAN ONE AFFIRMATIVE DEFENSE IS INVOLVED, YOU SHOULD CONSIDER EACH ONE SEPARATELY.

I CAUTION YOU THAT THE DEFENDANT DOES NOT HAVE TO DISPROVE THE PLAINTIFF'S CLAIMS, BUT IF THE DEFENDANT RAISES AN AFFIRMATIVE DEFENSE, THE ONLY WAY IT CAN PREVAIL ON THAT SPECIFIC DEFENSE IS IF IT PROVES THAT DEFENSE BY THE APPROPRIATE STANDARD OF PROOF AS EXPLAINED IN THESE INSTRUCTIONS.

CLEAR AND CONVINCING EVIDENCE IS EVIDENCE THAT PRODUCES IN YOUR MIND A FIRM BELIEF OR CONVICTION AS TO THE TRUTH OF THE MATTER SOUGHT TO BE ESTABLISHED. IT IS EVIDENCE SO CLEAR, DIRECT, WEIGHTY, AND CONVINCING AS TO ENABLE YOU TO COME TO A CLEAR CONVICTION WITHOUT HESITANCY.

THE EVIDENCE YOU ARE TO CONSIDER CONSISTS OF THE TESTIMONY OF THE WITNESSES, THE DOCUMENTS AND OTHER EXHIBITS ADMITTED INTO EVIDENCE, AND ANY FAIR INFERENCES AND REASONABLE CONCLUSIONS YOU CAN DRAW FROM THE FACTS AND CIRCUMSTANCES THAT HAVE BEEN PROVEN.

GENERALLY SPEAKING, THERE ARE TWO TYPES OF EVIDENCE. ONE IS DIRECT EVIDENCE, SUCH AS TESTIMONY OF

AN EYE-WITNESS. THE OTHER IS INDIRECT OR CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS EVIDENCE THAT PROVES A FACT FROM WHICH YOU CAN LOGICALLY CONCLUDE ANOTHER FACT EXISTS.

AS A GENERAL RULE, THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE BUT SIMPLY REQUIRES THAT YOU FIND THE FACTS FROM A PREPONDERANCE OF ALL THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL.

A STIPULATION IS AN AGREEMENT. WHEN THERE IS NO DISPUTE ABOUT CERTAIN FACTS, THE ATTORNEYS MAY AGREE OR STIPULATE TO THOSE FACTS. YOU MUST ACCEPT A STIPULATED FACT AS EVIDENCE AND TREAT THAT FACT AS HAVING BEEN PROVEN HERE IN COURT.

WHEN TESTIMONY OR AN EXHIBIT IS ADMITTED FOR A LIMITED PURPOSE, YOU MAY CONSIDER THAT TESTIMONY OR EXHIBIT ONLY FOR THE SPECIFIC LIMITED PURPOSE FOR WHICH IT WAS ADMITTED.

CERTAIN CHARTS AND SUMMARIES HAVE BEEN SHOWN TO YOU SOLELY TO HELP EXPLAIN OR SUMMARIZE THE FACTS DISCLOSED BY THE BOOKS, RECORDS, AND OTHER DOCUMENTS THAT ARE IN EVIDENCE. THESE CHARTS AND SUMMARIES ARE NOT EVIDENCE OR PROOF OF ANY FACTS. YOU SHOULD DETERMINE THE FACTS FROM THE EVIDENCE.

CERTAIN EXHIBITS HAVE BEEN SHOWN TO YOU AS

ILLUSTRATIONS. IT IS A PARTY'S DESCRIPTION, PICTURE, OR MODEL USED TO DESCRIBE SOMETHING INVOLVED IN THIS TRIAL. IF YOUR RECOLLECTION OF THE EVIDENCE DIFFERS FROM THE EXHIBIT, RELY ON YOUR RECOLLECTION.

YOU ALONE ARE TO DETERMINE THE QUESTIONS OF CREDIBILITY OR TRUTHFULNESS OF THE WITNESSES. IN WEIGHING THE TESTIMONY OF THE WITNESSES, YOU MAY CONSIDER THE WITNESS'S MANNER AND DEMEANOR ON THE WITNESS STAND, ANY FEELINGS OR INTEREST IN THE CASE OR ANY PREJUDICE OR ANY BIAS ABOUT THE CASE THAT HE OR SHE MAY HAVE AND THE CONSISTENCY OR INCONSISTENCY OF HIS OR HER TESTIMONY CONSIDERED IN THE LIGHT OF THE CIRCUMSTANCES. HAS THE WITNESS BEEN CONTRADICTED BY OTHER CREDIBLE EVIDENCE? HAS HE OR SHE MADE STATEMENTS AT OTHER TIMES AND PLACES CONTRARY TO THOSE MADE HERE ON THE WITNESS STAND?

YOU MUST GIVE THE TESTIMONY OF EACH WITNESS THE CREDIBILITY THAT YOU THINK IT DESERVES.

YOU ARE NOT TO DECIDE THIS CASE BY COUNTING THE NUMBER OF WITNESSES WHO HAVE TESTIFIED ON THE OPPOSING SIDES. WITNESS TESTIMONY IS WEIGHED: WITNESSES ARE NOT COUNTED. THE TEST IS NOT THE RELATIVE NUMBER OF WITNESSES, BUT THE RELATIVE CONVINCING FORCE OF THE EVIDENCE. THE TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT TO PROVE ANY FACT, EVEN IF A GREATER NUMBER

OF WITNESSES TESTIFIED TO THE CONTRARY, IF AFTER CONSIDERING ALL OF THE OTHER EVIDENCE, YOU BELIEVE THAT WITNESS.

IN DETERMINING THE WEIGHT TO GIVE TO THE TESTIMONY OF A WITNESS, CONSIDER WHETHER THERE WAS EVIDENCE THAT AT SOME OTHER TIME THE WITNESS SAID OR DID SOMETHING, OR FAILED TO SAY OR DO SOMETHING THAT WAS DIFFERENT FROM THE TESTIMONY GIVEN AT THE TRIAL.

A SIMPLE MISTAKE BY A WITNESS DOES NOT NECESSARILY MEAN THAT THE WITNESS DID NOT TELL THE TRUTH AS HE OR SHE REMEMBERS IT. PEOPLE MAY FORGET SOME THINGS OR REMEMBER OTHER THINGS INACCURATELY. IF A WITNESS MADE A MISSTATEMENT, CONSIDER WHETHER THAT MISSTATEMENT WAS AN INTENTIONAL FALSEHOOD OR SIMPLY AN INNOCENT MISTAKE. THE SIGNIFICANCE OF THAT MAY DEPEND ON WHETHER IT HAS TO DO WITH AN IMPORTANT FACT OR WITH ONLY AN UNIMPORTANT DETAIL.

CERTAIN TESTIMONY HAS BEEN PRESENTED TO YOU THROUGH DEPOSITIONS. A DEPOSITION IS THE SWORN RECORDED ANSWERS TO QUESTIONS A WITNESS WAS ASKED IN ADVANCE OF THE TRIAL. UNDER SOME CIRCUMSTANCES, IF A WITNESS CANNOT BE PRESENT TO TESTIFY FROM THE WITNESS STAND, THAT WITNESS'S TESTIMONY MAY BE PRESENTED UNDER OATH IN THE FORM OF A DEPOSITION. SOMETIME BEFORE THIS TRIAL, ATTORNEYS REPRESENTING THE PARTIES IN THIS CASE

QUESTIONED THIS WITNESS UNDER OATH. A COURT REPORTER WAS PRESENT AND RECORDED THE TESTIMONY. THE QUESTIONS AND ANSWERS HAVE BEEN PRESENTED TO YOU. THE DEPOSITION TESTIMONY IS ENTITLED TO THE SAME CONSIDERATION AND IS TO BE JUDGED BY YOU AS TO CREDIBILITY AND WEIGHED AND OTHERWISE CONSIDERED BY YOU IN THE SAME WAY AS IF THE WITNESS HAD BEEN PRESENTED -- HAD BEEN PRESENT AND HAD TESTIFIED FROM THE WITNESS STAND IN COURT.

WHEN KNOWLEDGE OF TECHNICAL SUBJECT MATTER MAY BE HELPFUL TO THE JURY, A PERSON WHO HAS SPECIAL TRAINING OR EXPERIENCE IN THAT TECHNICAL FIELD IS PERMITTED TO STATE HIS OR HER OPINION ON THOSE TECHNICAL MATTERS. HOWEVER, YOU ARE NOT REQUIRED TO ACCEPT THAT OPINION. AS WITH ANY OTHER WITNESS, IT IS UP TO YOU TO DECIDE WHETHER TO RELY ON IT.

THE FACT THAT A PARTY BROUGHT A LAWSUIT AND IS IN COURT SEEKING DAMAGES CREATES NO INFERENCE THAT THE PARTY IS ENTITLED TO A JUDGMENT. ANYONE MAY MAKE A CLAIM AND FILE A LAWSUIT. THE ACT OF MAKING A CLAIM IN A LAWSUIT, BY ITSELF, DOES NOT IN ANY WAY ESTABLISH -- OR DOES NOT IN ANY WAY TEND TO ESTABLISH THAT CLAIM AND IS NOT EVIDENCE.

IF THE PLAINTIFF HAS PROVED ITS CLAIMS AGAINST THE DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE AND THE DEFENDANT HAS FAILED TO PROVE ONE OR MORE OF ITS

AFFIRMATIVE DEFENSES BY THE APPROPRIATE STANDARD OF PROOF AS EXPLAINED IN THESE INSTRUCTIONS, YOU MUST DETERMINE THE DAMAGES TO WHICH THE PLAINTIFF IS ENTITLED. YOU SHOULD NOT INTERPRET THE FACT THAT I AM GIVING INSTRUCTIONS ABOUT THE PLAINTIFF'S DAMAGES AS AN INDICATION IN ANY WAY THAT I BELIEVE THAT THE PLAINTIFF SHOULD, OR SHOULD NOT WIN THIS CASE. IT IS YOUR TASK FIRST TO DECIDE WHETHER THE DEFENDANT IS LIABLE. I AM INSTRUCTING YOU ON DAMAGES ONLY SO THAT YOU WILL HAVE GUIDANCE IN THE EVENT YOU DECIDE THAT THE DEFENDANT IS LIABLE AND THAT THE PLAINTIFF IS ENTITLED TO RECOVER MONEY FROM THE DEFENDANT.

THE PLAINTIFF HAS ASSERTED CLAIMS FOR BREACH OF CONTRACT, MISAPPROPRIATION OF TRADE SECRETS, TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS, AND PATENT INFRINGEMENT. IF YOU DECIDE THAT THE DEFENDANT IS LIABLE TO THE PLAINTIFF ON MORE THAN ONE OF THE PLAINTIFF'S CLAIMS, YOU SHOULD ASSESS DAMAGES FOR EACH CLAIM SEPARATELY AND WITHOUT REGARD TO WHETHER YOU HAVE ALREADY AWARDED THE SAME DAMAGES ON ANOTHER CLAIM. I WILL ENSURE THAT THERE IS NO DOUBLE RECOVERY.

BREACH OF CONTRACT. YOU ARE INSTRUCTED AS A MATTER OF LAW THAT THE DEFENDANT RETAINED CONFIDENTIAL INFORMATION IN BREACH OF THE JUNE 3, 2004, CONFIDENTIALITY AGREEMENT FOR WHICH THE PLAINTIFF MAY

RECOVER ONLY NOMINAL DAMAGES. THE PLAINTIFF ALSO CLAIMS THAT THE DEFENDANT BREACHED THE CONFIDENTIAL INFORMATION BY (1) USING THE PLAINTIFF'S CONFIDENTIAL INFORMATION TO CONDUCT A BUILD VERSUS BUY ANALYSIS TO DETERMINE WHETHER THE DEFENDANT SHOULD DESIGN AND BUILD ITS OWN COMPETING AMBIENT LIGHT SENSORS INSTEAD OF ACQUIRING THE PLAINTIFF; AND (2) UTILIZING THE PLAINTIFF'S CONFIDENTIAL INFORMATION TO REVAMP THE DESIGNS FOR ITS FIRST DIGITAL AMBIENT LIGHT SENSOR AND DEVELOP ITS NEW LINE OF AMBIENT LIGHT SENSORS TO COMPETE WITH THE PLAINTIFF IN THE AMBIENT LIGHT SENSOR MARKET.

THE PLAINTIFF FURTHER CLAIMS THAT THE DEFENDANT'S BREACH OF THE CONFIDENTIALITY AGREEMENT CAUSED HARM TO THE PLAINTIFF FOR WHICH THE DEFENDANT SHOULD PAY DAMAGES.

THE DEFENDANT DENIES LIABILITY FOR BREACH OF THE CONFIDENTIALITY AGREEMENT. THE DEFENDANT ALLEGES THAT IT DID NOT USE THE PLAINTIFF'S INFORMATION IN ANY WAY PROHIBITED BY THE CONFIDENTIALITY AGREEMENT, THAT IT INSTRUCTED ITS EMPLOYEES TO DESTROY ALL COPIES OF THE PLAINTIFF'S INFORMATION, THAT THE PLAINTIFF'S INFORMATION WAS NEVER USED IN ANY WAY AFTER THE PLAINTIFF REJECTED THE DEFENDANT'S OFFERS TO ACQUIRE THE PLAINTIFF, AND THAT THE PLAINTIFF HAS NOT ALLEGED OR ESTABLISHED ANY HARM FROM THE PURPORTED BREACH AND THAT

THE CONFIDENTIALITY AGREEMENT EXPIRED ON JUNE 3, 2007.

TO RECOVER DAMAGES FROM THE DEFENDANT FOR BREACH OF CONTRACT, THE PLAINTIFF MUST PROVE ALL OF THE FOLLOWING:

1. THAT THE PLAINTIFF AND THE DEFENDANT ENTERED INTO A CONTRACT;

2. THAT THE PLAINTIFF DID ALL OR SUBSTANTIALLY ALL, OF THE SIGNIFICANT THINGS THAT THE CONTRACT REQUIRED IT TO DO OR THAT IT WAS EXCUSED FROM DOING THOSE THINGS;

3. THAT ALL CONDITIONS REQUIRED BY THE CONTRACT FOR THE DEFENDANT'S PERFORMANCE HAD OCCURRED OR WERE EXCUSED;

4. THAT THE DEFENDANT DID SOMETHING THAT THE CONTRACT PROHIBITED IT FROM DOING; AND

5. THAT THE PLAINTIFF WAS HARMED BY THAT FAILURE.

THE PARTIES AGREED IN THE CONFIDENTIALITY AGREEMENT THAT THE PARTIES' AGREEMENT SURVIVED UNTIL JUNE 3, 2007.

THE DEFENDANT CONTENDS THAT IT DID NOT HAVE TO ABIDE BY THE TERMS OF THE CONFIDENTIALITY AGREEMENT AFTER JUNE 3, 2007.

TO OVERCOME THIS CONTENTION, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE

VIOLATIONS OF THE CONFIDENTIALITY AGREEMENT OF WHICH IT ACCUSES THE DEFENDANT OCCURRED PRIOR TO JUNE 3, 2007.

IF THE PLAINTIFF DOES NOT PROVE THAT THE FACTS OF WHICH IT ACCUSES THE DEFENDANT OF DOING OCCURRED PRIOR TO JUNE 3, 2007, THEN THE DEFENDANT WAS NOT REQUIRED TO ABIDE BY THE TERMS OF THE CONFIDENTIALITY AGREEMENT.

IF YOU DECIDE THAT THE PLAINTIFF HAS PROVED ITS CLAIM AGAINST THE DEFENDANT FOR BREACH OF THE CONFIDENTIALITY AGREEMENT, YOU MUST ALSO DECIDE HOW MUCH MONEY, IF ANY, WOULD REASONABLY COMPENSATE THE PLAINTIFF FOR THE HARM CAUSED BY THE BREACH. THIS COMPENSATION IS CALLED DAMAGES. THE PURPORTED -- I'M SORRY. THE PURPOSE OF SUCH DAMAGES IS TO PUT THE PLAINTIFF IN AS GOOD A POSITION AS IT WOULD HAVE BEEN IF THE DEFENDANT HAD PERFORMED AS PROMISED.

TO RECOVER DAMAGES FOR ANY HARM, THE PLAINTIFF MUST PROVE THAT WHEN THE CONTRACT WAS MADE, BOTH PARTIES KNEW OR COULD REASONABLY HAVE FORESEEN THAT THE HARM WAS LIKELY TO OCCUR IN THE ORDINARY COURSE OF EVENTS AS A RESULT OF THE BREACH OF CONTRACT.

THE PLAINTIFF ALSO MUST PROVE THAT -- THE AMOUNT OF ITS DAMAGES ACCORDING TO THE FOLLOWING INSTRUCTIONS. IT DOES NOT HAVE TO PROVE THE EXACT AMOUNT OF DAMAGES. YOU MUST NOT SPECULATE OR GUESS IN

AWARDING DAMAGES.

FOR THE DEFENDANT'S RETENTION OF THE PLAINTIFF'S CONFIDENTIALITY -- CONFIDENTIAL INFORMATION IN VIOLATION OF THE TERMS OF THE CONFIDENTIALITY AGREEMENT, THE PLAINTIFF SEEKS NOMINAL DAMAGES, SUCH AS AN AWARD OF $1.

FOR THE DEFENDANT'S ALLEGED USE OF THE PLAINTIFF'S CONFIDENTIAL INFORMATION IN VIOLATION OF THE TERMS OF THE CONFIDENTIALITY AGREEMENT, THE PLAINTIFF CLAIMS DAMAGES IN THE FORM OF A REASONABLE ROYALTY.

IF THE DEFENDANT BREACHED THE CONTRACT AND THE BREACH CAUSED HARM, THE PLAINTIFF IS NOT ENTITLED TO RECOVER DAMAGES FOR HARM THAT THE DEFENDANT PROVES THE PLAINTIFF COULD HAVE AVOIDED WITH REASONABLE EFFORTS OR EXPENDITURES. YOU SHOULD CONSIDER THE REASONABLENESS OF THE PLAINTIFF'S EFFORTS IN LIGHT OF THE CIRCUMSTANCES FACING IT AT THE TIME, INCLUDING ITS ABILITY TO MAKE THE EFFORTS OR EXPENDITURES WITHOUT UNDUE RISK OR HARDSHIP.

UNDER THE DOCTRINE OF UNCLEAN HANDS, A PLAINTIFF MUST ACT FAIRLY IN THE MATTER FOR WHICH HE SEEKS A REMEDY. HE MUST COME INTO COURT WITH CLEAN HANDS AND KEEP THEM CLEAN OR HE WILL BE DENIED RELIEF REGARDLESS OF THE MERITS OF THE ACTION. THUS, THE PLAINTIFF MAY NOT RECOVER FOR BREACH OF CONTRACT IF IT ENGAGED IN CONDUCT THAT VIOLATES CONSCIENCE OR GOOD

FAITH OR OTHER EQUITABLE STANDARDS OF CONTACT.

SIMILARLY, THE PLAINTIFF CANNOT RECOVER DAMAGES FOR BREACH OF CONTRACT IF THE PLAINTIFF COMMITTED A MATERIAL BREACH OF THE CONFIDENTIALITY AGREEMENT PRIOR TO ANY ALLEGED BREACH BY THE DEFENDANT. WHEN A PARTY'S FAILURE TO PERFORM A CONTRACTUAL OBLIGATION CONSTITUTES A MATERIAL BREACH OF THE CONTRACT, THE OTHER PARTY MAY BE DISCHARGED FROM ITS DUTY TO PERFORM UNDER THE CONTRACT. WHETHER A PARTIAL BREACH OF CONTRACT IS MATERIAL DEPENDS ON THE IMPORTANCE OR SERIOUSNESS OF THE BREACH AND THE PROBABILITY OF THE INJURED PARTY GETTING SUBSTANTIAL PERFORMANCE. A MATERIAL BREACH OF ONE ASPECT OF THE CONTRACT GENERALLY CONSTITUTES A MATERIAL BREACH OF THE WHOLE CONTRACT.

MISAPPROPRIATION OF TRADE SECRETS. THE PLAINTIFF CLAIMS THAT AFTER THE PLAINTIFF AND THE DEFENDANT ENTERED INTO A CONFIDENTIALITY AGREEMENT IN JUNE, 2004, THE DEFENDANT MISAPPROPRIATED THE PLAINTIFF'S TRADE SECRETS THAT WERE PROVIDED TO THE DEFENDANT UNDER THE TERMS OF THE CONFIDENTIALITY AGREEMENT. SPECIFICALLY, THE PLAINTIFF CLAIMS THAT THE DEFENDANT MISAPPROPRIATED THE PLAINTIFF'S TRADE SECRETS WHEN THE DEFENDANT, NUMBER ONE, USED THE PLAINTIFF'S TRADE SECRETS TO CONDUCT A BUILD VERSUS BUY ANALYSIS TO DETERMINE WHETHER THE DEFENDANT SHOULD DESIGN AND BUILD

THE DEFENDANT'S COMPETING AMBIENT LIGHT SENSORS INSTEAD OF ACQUIRING THE PLAINTIFF AND (2) UTILIZED THE PLAINTIFF'S TRADE SECRETS TO REVAMP THE DESIGNS FOR ITS FIRST DIGITAL AMBIENT LIGHT SENSOR AND DEVELOP ITS NEW LINE OF AMBIENT LIGHT SENSORS TO COMPETE WITH THE PLAINTIFF IN THE AMBIENT LIGHT SENSOR MARKET.

THE PLAINTIFF FURTHER ALLEGES THAT THE DEFENDANT'S MISAPPROPRIATION OF THE PLAINTIFF'S TRADE SECRETS CAUSED HARM TO THE PLAINTIFF FOR WHICH THE DEFENDANT SHOULD PAY DAMAGES.

THE DEFENDANT DENIES THAT IT MISAPPROPRIATED THE PLAINTIFF'S TRADE SECRETS. THE DEFENDANT ASSERTS THAT NONE OF THE PLAINTIFF'S CONFIDENTIAL INFORMATION RECEIVED BY THE DEFENDANT CONSTITUTES A PROTECTABLE TRADE SECRET AND THAT THE PLAINTIFF HAS NOT DEMONSTRATED THAT THE DEFENDANT USED ANY SPECIFIC ALLEGED TRADE SECRET. THE DEFENDANT ALSO CLAIMS THAT THE PLAINTIFF'S TRADE SECRET MISAPPROPRIATION CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS AND THAT THE PLAINTIFF'S ALLEGED TRADE SECRETS WERE READILY ASCERTAINABLE BY PROPER MEANS.

TO SUCCEED ON ITS TRADE SECRET MISAPPROPRIATION CLAIM, THE PLAINTIFF MUST PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. A TRADE SECRET EXISTS;

2. THE TRADE SECRET WAS ACQUIRED THROUGH A BREACH OF A CONFIDENTIAL RELATIONSHIP OR DISCOVERED BY IMPROPER MEANS;

3. THE DEFENDANT USED THE TRADE SECRET WITHOUT AUTHORIZATION FROM THE PLAINTIFF; AND

4. THE DEFENDANT'S USE OF THE TRADE SECRET CAUSED DAMAGE TO THE PLAINTIFF.

A TRADE SECRET IS ANY FORMULA, PATTERN, DEVICE, OR COMPILATION OF INFORMATION WHICH IS USED IN ONE'S BUSINESS AND PRESENTS AN OPPORTUNITY TO OBTAIN AN ADVANTAGE OVER COMPETITORS WHO DO NOT KNOW OR USE IT. INFORMATION THAT IS PUBLIC KNOWLEDGE OR THAT IS GENERALLY KNOWN IN AN INDUSTRY CANNOT BE A TRADE SECRET. IN ADDITION, INFORMATION THAT IS GENERALLY KNOWN OR READILY ASCERTAINABLE BY INDEPENDENT INVESTIGATION IS NOT SECRET FOR PURPOSES OF TRADE SECRECY.

A TRADE SECRET CAN EXIST IN A COMBINATION OF CHARACTERISTICS AND COMPONENTS, EACH OF WHICH BY ITSELF IS IN THE PUBLIC DOMAIN. BUT THE UNIFIED PROCESS, DESIGN, AND OPERATION OF WHICH IN UNIQUE COMBINATION AFFORDS A COMPETITIVE ADVANTAGE AND IS A PROTECTABLE TRADE SECRET. ALTHOUGH THE LAW REQUIRES THE TRADE SECRET OWNER TO TAKE REASONABLE PRECAUTIONS TO MAINTAIN THE SECRECY OF ITS TRADE SECRETS, SECRECY NEED

NOT BE ABSOLUTE.

IN DECIDING WHETHER SOMETHING CONSTITUTES A TRADE SECRET, YOU MAY CONSIDER THE FOLLOWING FACTORS:

1. THE EXTENT TO WHICH THE INFORMATION IS KNOWN OUTSIDE OF THE PLAINTIFF'S BUSINESS;

2. THE EXTENT TO WHICH IT IS KNOWN BY EMPLOYEES AND OTHERS INVOLVED IN THE PLAINTIFF'S BUSINESS;

3. THE EXTENT OF THE MEASURES TAKEN BY THE PLAINTIFF TO GUARD THE SECRECY OF THE INFORMATION;

4. THE VALUE OF THE INFORMATION TO THE PLAINTIFF AND TO ITS COMPETITORS;

5. THE AMOUNT OF EFFORT OR MONEY EXPENDED BY THE PLAINTIFF IN DEVELOPING THE INFORMATION; AND

6. THE EASE OR DIFFICULTY WITH WHICH THE INFORMATION COULD BE PROPERLY ACQUIRED OR DUPLICATED BY OTHERS.

THE WEIGHT TO BE GIVEN TO EACH OF THESE FACTORS IS UP TO YOU TO DETERMINE.

IMPROPER MEANS ARE THOSE THAT FALL BELOW THE GENERALLY ACCEPTED STANDARDS OF COMMERCIAL MORALITY AND REASONABLE CONDUCT. THE CONCEPT OF IMPROPER MEANS DOES NOT INCLUDE REVERSE ENGINEERING OF PROPERLY ACQUIRED DEVICES.

USE OF A TRADE SECRET MEANS ANY

EXPLOITATION OF THE TRADE SECRET THAT IS LIKELY TO RESULT IN INJURY TO THE TRADE SECRET OWNER OR ENRICHMENT TO THE DEFENDANT. MARKETING GOODS THAT EMBODY THE TRADE SECRET, EMPLOYING THE TRADE SECRET IN MANUFACTURING OR PRODUCTION, RELYING ON THE TRADE SECRET TO ASSIST OR ACCELERATE RESEARCH OR DEVELOPMENT, OR SOLICITING CUSTOMERS THROUGH THE USE OF INFORMATION THAT IS A TRADE SECRET ALL CONSTITUTE "USE."

THE DEFENDANT ASSERTS AS A DEFENSE THAT THE STATUTE OF LIMITATIONS BARS THE PLAINTIFF'S TRADE SECRET MISAPPROPRIATION CLAIMS. TO PREVAIL ON THIS DEFENSE, THE DEFENDANT MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF MUST HAVE KNOWN OR REASONABLY -- OR MUST HAVE BEEN REASONABLY ABLE TO DISCOVER THAT THE DEFENDANT HAD USED THE PLAINTIFF'S PROPRIETARY INFORMATION TO CREATE COMPETING PRODUCTS BEFORE NOVEMBER 25, 2005.

THE PLAINTIFF CLAIMS THAT THE DEFENDANT, BY DENYING WRONGDOING, FRAUDULENTLY CONCEALED THE FACTS UPON WHICH ITS CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS IS BASED, THEREBY TOLLING THE STATUTE OF LIMITATIONS. THE DENIAL OF WRONGDOING CONSTITUTES FRAUDULENT CONCEALMENT WHEN THE CIRCUMSTANCES MAKE IT REASONABLE FOR THE PLAINTIFF TO RELY ON THE DEFENDANT'S DENIAL.

IF YOU FIND THAT THE PLAINTIFF PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT MISAPPROPRIATED THE PLAINTIFF'S TRADE SECRETS, YOU MUST THEN DETERMINE THE PLAINTIFF'S REMEDY FOR THE DEFENDANT'S CONDUCT. REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS INCLUDE THE AMOUNT OF MONEY, IF ANY, IF PAID NOW IN CASH THAT WOULD FAIRLY AND REASONABLY COMPENSATE THE PLAINTIFF FOR THE HARM THAT WAS PROXIMATELY CAUSED BY THE DEFENDANT AS A RESULT OF THE MISAPPROPRIATION OF THE PLAINTIFF'S TRADE SECRETS.

REMEDIES MAY INCLUDE:

1. DISGORGEMENT OF THE DEFENDANT'S PROFITS FOR THE PRODUCTS AT ISSUE; OR

2. REASONABLE ROYALTY FOR THE DEFENDANT'S SALES OF THE PRODUCTS AT ISSUE.

UNDER THE DISGORGEMENT REMEDY, THE PLAINTIFF IS ONLY ENTITLED TO THE NET PROFITS RESULTING FROM THE ACTS OF TRADE SECRET MISAPPROPRIATION.

THE PLAINTIFF IS ALSO SEEKING EXEMPLARY DAMAGES. EXEMPLARY DAMAGES MEANS AN AMOUNT THAT YOU MAY, IN YOUR DISCRETION, AWARD AS A PENALTY OR BY WAY OF PUNISHING THE WRONGDOER.

THE PLAINTIFF IS ENTITLED TO EXEMPLARY DAMAGES IF IT PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE HARM IT SUFFERED RESULTED FROM THE DEFENDANT'S

FRAUD, MALICE, OR GROSS NEGLIGENCE.

PROOF OF FRAUD REQUIRES PROOF THAT THE OFFENDING PARTY MADE A MATERIAL MISREPRESENTATION, THAT THE MISREPRESENTATION WAS MADE WITH KNOWLEDGE OF ITS FALSITY OR MADE RECKLESSLY WITHOUT ANY KNOWLEDGE OF THE TRUTH AND AS A POSITIVE ASSERTION, THAT THE REPRESENTATION WAS MADE WITH THE INTENTION THAT IT SHOULD BE ACTED UPON BY THE OTHER PARTY AND THAT THE OTHER PARTY RELIED ON THE MISREPRESENTATION AND THEREBY SUFFERED INJURY.

PROOF OF MALICE REQUIRES PROOF THAT THE OFFENDING PARTY ACTED WITH THE PURPOSE OF CAUSING SUBSTANTIAL INJURY TO THE OTHER PARTY.

PROOF OF GROSS NEGLIGENCE REQUIRES PROOF OF AN ACT OR OMISSION BY THE DEFENDANT, WHICH, WHEN VIEWED OBJECTIVELY FROM THE DEFENDANT'S STANDPOINT AT THE TIME OF ITS OCCURRENCE, INVOLVED AN EXTREME DEGREE OF RISK CONSIDERING THE PROBABILITY AND MAGNITUDE OF THE POTENTIAL HARM TO OTHERS AND OF WHICH THE DEFENDANT HAD ACTUAL, SUBJECTIVE AWARENESS BUT NEVERTHELESS PROCEEDED WITH CONSCIOUS INDIFFERENCE TO THE RIGHTS, SAFETY, OR WELFARE OF OTHERS.

IN DECIDING WHETHER TO AWARD EXEMPLARY DAMAGES, YOU MAY CONSIDER THE FOLLOWING:

1. THE NATURE OF THE WRONG;

2. THE CHARACTER OF THE CONDUCT INVOLVED;

3. THE DEFENDANT'S DEGREE OF CULPABILITY;

4. THE SITUATION AND SENSIBILITIES OF THE PARTIES CONCERNED;

5. THE EXTENT TO WHICH SUCH CONDUCT OFFENDS A PUBLIC SENSE OF JUSTICE AND PROPRIETY; AND

6. THE DEFENDANT'S NET WORTH.

TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS. THE PLAINTIFF CLAIMS THAT THE DEFENDANT TORTIOUSLY INTERFERED WITH THE PLAINTIFF'S PROSPECTIVE RELATIONS WITH APPLE. THE PLAINTIFF CLAIMS THAT THE DEFENDANT DID SO WITH A CONSCIOUS DESIRE TO PREVENT THE RELATIONSHIP FROM OCCURRING AND/OR KNEW THAT THE INTERFERENCE WAS CERTAIN OR SUBSTANTIALLY CERTAIN TO OCCUR AS A RESULT OF THE DEFENDANT'S CONDUCT. THE PLAINTIFF FURTHER CLAIMS THAT IT HAS INCURRED ACTUAL HARM AND DAMAGES AS A RESULT OF THE DEFENDANT'S INTERFERENCE.

THE DEFENDANT DENIES THAT IT TORTIOUSLY INTERFERED WITH THE PLAINTIFF'S PROSPECTIVE RELATIONS WITH APPLE. THE DEFENDANT CONTENDS THAT IT HAD A PREEXISTING RELATIONSHIP WITH APPLE CONCERNING AMBIENT LIGHT SENSOR PRODUCTS THAT PREDATED THE CONFIDENTIALITY AGREEMENT WITH THE PLAINTIFF, THAT THE PLAINTIFF NEVER IDENTIFIED APPLE AS A TARGET CUSTOMER TO THE DEFENDANT,

THAT THE DEFENDANT DID NOT USE ANY INFORMATION FROM THE PLAINTIFF TO OBTAIN APPLE'S BUSINESS, THAT THE PLAINTIFF DID NOT HAVE A PROSPECTIVE CONTRACT WITH APPLE, AND THAT EVEN IF ONE EXISTED, THE DEFENDANT DID NOT INTERFERE WITH ANY SUCH PROSPECTIVE CONTRACT.

IN ORDER TO SHOW THAT THE DEFENDANT INTENTIONALLY INTERFERED WITH POTENTIAL BUSINESS RELATIONSHIPS WITH APPLE, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THE FOLLOWING:

1. THE EXISTENCE OF A REASONABLE PROBABILITY THAT THE PLAINTIFF WOULD HAVE ENTERED INTO A CONTRACTUAL OR BUSINESS RELATIONSHIP WITH APPLE;

2. THE DEFENDANT COMMITTED AN INDEPENDENTLY TORTIOUS OR UNLAWFUL ACT THAT WAS A SUBSTANTIAL FACTOR IN PREVENTING THE CONTRACTUAL OR BUSINESS RELATIONSHIP FROM OCCURRING;

3. THE DEFENDANT ACTED WITH A CONSCIOUS DESIRE TO PREVENT THE RELATIONSHIP FROM OCCURRING OR KNEW THAT THE INTERFERENCE WAS CERTAIN OR SUBSTANTIALLY CERTAIN TO OCCUR AS A RESULT OF THE CONDUCT; AND

4. THE PLAINTIFF SUFFERED ACTUAL HARM OR DAMAGE AS A RESULT OF THE INTERFERENCE.

IF YOU FIND THE DEFENDANT INTERFERED WITH THE PLAINTIFF'S PROSPECTIVE BUSINESS RELATIONS WITH APPLE, YOU WILL BE ASKED WHAT SUM OF MONEY WOULD

REASONABLY COMPENSATE THE PLAINTIFF FOR ITS LOST PROFITS, IF ANY, CAUSED BY THE INTERFERENCE. LOST PROFITS ARE DAMAGES FOR THE LOSS OF NET INCOME TO A BUSINESS, REFLECTING INCOME FROM THE LOST BUSINESS ACTIVITY LESS EXPENSES THAT WOULD HAVE BEEN ATTRIBUTABLE TO THAT ACTIVITY. THE CALCULATION OF LOST PROFIT DAMAGES MUST BE BASED ON NET PROFITS, NOT ON GROSS PROFITS. THE PLAINTIFF IS ALSO SEEKING EXEMPLARY DAMAGES WHICH I PREVIOUSLY EXPLAINED TO YOU.

PATENT ISSUES. THE PLAINTIFF CONTENDS THAT THE DEFENDANT MAKES, USES, OFFERS TO SELL, SELLS, OR IMPORTS PRODUCTS AND METHODS THAT INFRINGE CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT.

THE DEFENDANT DENIES THAT IT INFRINGES THE CLAIMS OF THE '981 PATENT. THE DEFENDANT ALSO CONTENDS THAT CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT ARE INVALID.

I'M GOING TO START WITH THE PLAINTIFF'S CLAIM THAT THE DEFENDANT INFRINGED ITS PATENT. I WILL DISCUSS WITH YOU SHORTLY THE DEFENDANT'S CLAIM -- LET ME RE-READ THAT.

I'M GOING TO START WITH THE PLAINTIFF'S CLAIM THAT THE DEFENDANT INFRINGED ITS PATENT. I WILL DISCUSS WITH YOU SHORTLY THE DEFENDANT'S CLAIM THAT THE PLAINTIFF'S PATENT IS INVALID.

NOW, WHAT IS PATENT INFRINGEMENT? ONCE A PATENT IS ISSUED, THE OWNER OF THE PATENT, IF IT IS VALID, HAS THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING, OR SELLING THE PATENTED INVENTION THROUGHOUT THE UNITED STATES FOR A PERIOD OF 20 YEARS. INFRINGEMENT OCCURS WHEN A PERSON, WITHOUT THE PATENT OWNER'S PERMISSION, MAKES, USES, SELLS, OR OFFERS FOR SALE, SOMETHING THAT IS WITHIN THE SCOPE OF WHAT THE PATENT COVERS.

NOW, HOW DO WE DECIDE WHAT THE PATENT COVERS? WE DO THAT BY LOOKING AT THE PATENT'S CLAIMS. THE PATENT CLAIMS ARE THE NUMBERED PARAGRAPHS AT THE END OF THE PATENT. THE CLAIMS ARE IMPORTANT BECAUSE IT IS THE WORDS OF THE CLAIMS THAT DEFINE WHAT A PATENT COVERS. THE FIGURES AND TEXT IN THE REST OF THE PATENT PROVIDE A DESCRIPTION OR EXAMPLES OF THE INVENTION AND PROVIDE A CONTEXT FOR THE CLAIMS, BUT IT IS THE CLAIMS THAT DEFINE THE BREADTH OF THE PATENT'S COVERAGE. EACH CLAIM IS EFFECTIVELY TREATED AS IF IT WERE A SEPARATE CLAIM, AND EACH CLAIM MAY COVER MORE OR LESS THAN ANY OTHER CLAIM. THEREFORE, WHAT A PATENT COVERS DEPENDS, IN TURN, ON WHAT EACH OF ITS CLAIMS COVERS.

AS YOU HAVE HEARD, THE PLAINTIFF SAYS THAT THE DEFENDANT DIRECTLY INFRINGES SIX CLAIMS OF THE '981 PATENT. I WILL EXPLAIN DIRECT INFRINGEMENT IN A MINUTE.

ALTHOUGH THERE ARE A LOT OF CLAIMS TO REVIEW, YOU WILL NOTICE THERE IS A LOT OF OVERLAP AMONG THEM. MANY OF THE TERMS IN THE CLAIMS WILL BE EASY FOR YOU TO UNDERSTAND. FOR THE MOST PART, YOU CAN JUST GIVE THE WORDS THEIR ORDINARY MEANING, EVEN THOUGH THE CLAIM LANGUAGE USES ABSTRACT TERMS RATHER THAN CONCRETE EXAMPLES. THERE ARE A FEW EXAMPLES -- THERE ARE A FEW TERMS, HOWEVER, THAT I WILL DEFINE FOR YOU, ALTHOUGH MY DEFINITIONS ALSO USE SOME ABSTRACT TERMS. I HAVE DEFINED CERTAIN TERM AS FOLLOWS:

TERM: AT LEAST ONE INPUT OF THE AT LEAST ONE A/D CONVERTER FOR CONVERTING A RESPECTIVE ONE OF THE FIRST AND SECOND PHOTOCURRENT INTO A DIGITAL OUTPUT.

THE COURT'S DEFINITION OR CONSTRUCTION IS, AT LEAST ONE INPUT OF THE AT LEAST ONE A/D CONVERTER FOR CHANGING EITHER THE FIRST OR SECOND PHOTOCURRENT INTO A DIGITAL OUTPUT.

THE NEXT TERM IS, ESTABLISHING A SPECTRAL CONTENT RESPONSE.

THE COURT'S CONSTRUCTION OF THAT TERM IS, ESTABLISHING A RESPONSE BASED UPON THE WAVELENGTH OF INCIDENT LIGHT.

THE NEXT TERM IS, SPECTRAL CONTENT RESPONSE CONFIGURED TO SIMULATE THAT WHICH WOULD BE OBSERVED BY A HUMAN EYE.

THE COURT'S CLAIM CONSTRUCTION IS, A RESPONSE BASED UPON THE WAVELENGTH OF INCIDENT LIGHT THAT IS CONFIGURED TO SIMULATE WHAT WOULD BE OBSERVED BY THE HUMAN EYE.

AND MEMBERS OF THE JURY, YOU'LL SEE THAT UNDER THE -- THE COLUMN "TERM," I HAVE IDENTIFIED FOR YOU WHICH CLAIMS -- IN WHICH CLAIMS IN THE PATENT -- AND YOU'LL HAVE A COPY OF THE PATENT -- YOU WILL FIND THESE TERMS. SO, WHEN YOU READ THOSE TERMS, YOU CAN SIMPLY LOOK AT MY CONSTRUCTION AND PUT MY CONSTRUCTION IN PLACE OF THE QUOTED LANGUAGE IN THE CLAIM TERMS. YOU'LL HAVE A COPY OF THE PATENT. YOU CAN LOOK FOR THE CLAIM TERMS THERE AT THE END OF THE PATENT, AS I'VE SAID, AND YOU CAN SIMPLY TAKE MY LANGUAGE AND PUT -- PUT THAT RIGHT IN PLACE OF THE LANGUAGE THAT'S IN THE PATENT ITSELF. SO, THAT'S WHAT I'M GOING OVER HERE FOR YOU, IS MY DEFINITION OR CONSTRUCTION OF SOME OF THE TERMS IN THE PATENT.

ALL RIGHT, THE NEXT ONE IS -- AND I'M ON PAGE 18 -- SPECTRAL CONTENT RESPONSE CONFIGURED TO SIMULATE THAT WHICH WOULD BE OBSERVED BY HUMAN EYE.

THE COURT'S DEFINITION OR CONSTRUCTION IS, A RESPONSE BASED UPON THE WAVELENGTH OF INCIDENT LIGHT THAT IS CONFIGURED TO SIMULATE WHAT WOULD BE OBSERVED BY THE HUMAN EYE.

THE NEXT TERM IS, MONOLITHIC OPTICAL DETECTOR.

THE COURT'S CONSTRUCTION IS, AN OPTICAL DETECTOR FORMED ON OR IN A SINGLE SEMICONDUCTOR SUBSTRATE.

THE NEXT TERM IS, INTEGRATED WITH.

THE COURT'S CONSTRUCTION IS, COMBINED PHYSICALLY AS WELL AS ELECTRICALLY.

NEXT TERM, MONOLITHIC INTEGRATED CIRCUIT.

COURT'S CONSTRUCTION IS, AN ELECTRONIC INTEGRATED CIRCUIT FORMED ON OR IN A SINGLE SEMICONDUCTOR SUBSTRATE.

THE NEXT TERM IS, ANALOG TO DIGITAL CONVERTER INTEGRATED WITH SAID FIRST AND SECOND WELLS AND FORMED AS A MONOLITHIC INTEGRATED CIRCUIT.

THE COURT'S CONSTRUCTION IS, AN ANALOG TO DIGITAL A/D CONVERTER COMBINED PHYSICALLY AS WELL AS ELECTRICALLY WITH SAID FIRST AND SECOND WELLS AND FORMED ON OR IN A SINGLE SEMICONDUCTOR SUBSTRATE.

THE NEXT TERM IS, EXPOSED TO INCIDENT LIGHT.

THE COURT'S CONSTRUCTION OF THAT TERM IS, RECEIVES OR IS SUBJECTED TO INCIDENT LIGHT INCLUDING WAVELENGTHS OF LIGHT IN THE VISIBLE AND NONVISIBLE SPECTRUM.

THE NEXT TERM IS, SHIELDED FROM THE INCIDENT LIGHT.

THE COURT'S DEFINITION OR CONSTRUCTION IS, BLOCKS ALL INCIDENT LIGHT, INCLUDING ALL WAVELENGTHS OF LIGHT IN BOTH THE VISIBLE AND NON-VISIBLE SPECTRUM.

THE NEXT TERM IS, AS A FUNCTION OF THE INCIDENT LIGHT.

THE COURT'S CONSTRUCTION IS, DEPENDS ON OR VARIES WITH THE WAVELENGTH(S) AND/OR INTENSITY OF THE INCIDENT LIGHT.

THE NEXT TERM, ALTERNATING CURRENT (AC) LIGHTING.

THE COURT'S CONSTRUCTION, LIGHT GENERATED THROUGH THE USE OF ALTERNATING CURRENT.

THE NEXT TERM, MEANS FOR DETERMINING AN INDICATION OF SPECTRAL CONTENT OF THE INCIDENT LIGHT.

THE COURT'S CONSTRUCTION IS THAT THE FUNCTION OF THE MEANS FOR DETERMINING TERM IS DETERMINING AN INDICATION OF SPECTRAL CONTENT OF THE INCIDENT LIGHT. THE CORRESPONDING STRUCTURE OF THE MEANS FOR DETERMINING TERM IS A PROCESSING AND CONTROL UNIT 46 OF FIGURE 3 AND ITS EQUIVALENTS.

THE LAST TERM IS, "WELL."

THE COURT'S CONSTRUCTION IS, A REGION OF A FIRST TYPE WITHIN A SUBSTRATE REGION OF A SECOND TYPE

THAT FORMS A JUNCTION THERE BETWEEN.

A CLAUSE USED IN CLAIM 1 OF THE '981 PATENT IS WRITTEN IN A SPECIAL FORM CALLED A MEANS PLUS FUNCTION CLAUSE. THESE CLAUSES REQUIRE A SPECIAL INTERPRETATION. THE WORDS OF EACH OF THESE CLAUSES DO NOT COVER ALL MEANS THAT PERFORM THE RECITED FUNCTION, BUT COVER ONLY THE STRUCTURE DESCRIBED IN THE PATENT SPECIFICATION AND DRAWINGS THAT PERFORM THE RECITED FUNCTION.

THE PARTIES AGREE THAT THE PHRASE, "MEANS FOR DETERMINING AN INDICATION OF SPECTRAL CONTENT OF THE INCIDENT LIGHT," IS A MEANS-PLUS-FUNCTION CLAUSE. FOR THE PURPOSES OF THIS CASE, I HAVE IDENTIFIED IN MY DEFINITIONS THE STRUCTURE DEFINED -- EXCUSE ME -- THE STRUCTURE DESCRIBED IN THE '981 PATENT THAT PERFORMS THE FUNCTION OF DETERMINING AN INDICATION OF SPECTRAL CONTENT OF THE INCIDENT LIGHT. YOU SHOULD APPLY MY DEFINITION OF THE FUNCTION AND THE STRUCTURES DESCRIBED IN THE '981 PATENT FOR PERFORMING IT AS YOU WOULD APPLY MY DEFINITION OF ANY OTHER CLAIM TERM.

SOME OF THE ASSERTED CLAIMS USE THE WORD, "COMPRISING." COMPRISING IS A WORD USED A LOT IN PATENTS AND NOT MUCH IN ORDINARY CONVERSATION. IT MEANS, INCLUDING OR CONTAINING. A CLAIM THAT USES THE WORD, "COMPRISING," OR, "COMPRISES," IS NOT LIMITED TO

PRODUCTS OR METHODS HAVING ONLY THE ELEMENTS THAT ARE CONTAINED IN THE CLAIM BUT ALSO COVERS PRODUCTS OR METHODS THAT ADD ADDITIONAL ELEMENTS.

FOR EXAMPLE, TAKE A CLAIM THAT COVERS A TABLE. IF THE CLAIM REFERS TO A TABLE COMPRISING A TABLETOP, LEGS, AND GLUE, THE CLAIM WILL COVER ANY TABLE THAT CONTAINS THOSE STRUCTURES, EVEN IF THE TABLE ALSO CONTAINS OTHER STRUCTURES, SUCH AS A LEAF OR WHEELS ON THE LEGS. HOWEVER, IF A TABLE CONTAINS A TABLETOP, LEGS, BUT NO GLUE, THEN THE CLAIM DOES NOT COVER THE TABLE.

A PATENT OWNER HAS THE RIGHT TO STOP OTHERS FROM USING THE INVENTION COVERED BY THE PATENT CLAIMS DURING THE LIFE OF THE PATENT. IF ANY PERSON MAKES, USES, OR OFFERS TO SELL WHAT IS COVERED BY THE PATENT CLAIMS WITHOUT THE PATENT OWNER'S PERMISSION, THAT PERSON IS SAID TO INFRINGE THE PATENT.

TO DETERMINE WHETHER THERE IS INFRINGEMENT, YOU MUST COMPARE THE ALLEGEDLY INFRINGING PRODUCT WITH THE SCOPE OF THE PATENT CLAIMS AS I HAVE DEFINED THEM FOR YOU.

IN ORDER TO INFRINGE A PATENT CLAIM, A PRODUCT OR METHOD MUST INCLUDE EVERY ELEMENT OF THE CLAIM. SO, IN DETERMINING WHETHER THE DEFENDANT INFRINGES THE PLAINTIFF'S ASSERTED CLAIMS, YOU MUST

DETERMINE FOR THE ACCUSED PRODUCT WHETHER THAT PRODUCT OR THE USE OF THAT PRODUCT CONTAINS EACH AND EVERY ELEMENT CONTAINED IN A CLAIM. I'LL REFER TO THE SEPARATE PARAGRAPHS IN EACH OF THE CLAIMS AT ISSUE IN THIS CASE AS ELEMENTS. SOMETIMES, IN THIS CASE, THE PARTIES HAVE REFERRED TO THE ELEMENTS OF THE CLAIMS AS LIMITATIONS. A CLAIM ELEMENT IS PRESENT IF IT EXISTS IN THE ACCUSED PRODUCT JUST AS IT IS DESCRIBED IN THE CLAIM LANGUAGE.

YOU MUST CONSIDER EACH OF THE ASSERTED PATENT CLAIMS SEPARATELY. IN THE VERDICT FORM, YOU WILL BE ASKED TO ENTER A SEPARATE VERDICT FOR EACH OF THE CLAIMS ASSERTED IN THE CASE.

I MENTIONED DIRECT INFRINGEMENT EARLIER. DIRECT INFRINGEMENT REFERS TO INFRINGEMENT IN WHICH A SINGLE PARTY COMMITS ALL THE ACTS NECESSARY TO INFRINGE. IN ORDER TO PROVE DIRECT INFRINGEMENT, IT IS NOT NECESSARY TO SHOW THAT THE PARTY WHO IS ACCUSED OF INFRINGEMENT INTENDED TO INFRINGE OR EVEN KNEW THAT IT WAS INFRINGING. AS I MENTIONED EARLIER, THE PLAINTIFF CLAIMS THAT THE DEFENDANT DIRECTLY INFRINGES A NUMBER OF THE CLAIMS IN THE '918 PATENT BY MAKING, USING, OFFERING TO SELL, SELLING, OR IMPORTING THE ACCUSED PRODUCTS.

THERE ARE TWO DIFFERENT TYPES OF CLAIMS IN THE '981 PATENT. ONE TYPE OF CLAIM IS CALLED AN

INDEPENDENT CLAIM. THE OTHER TYPE OF CLAIM IS CALLED A DEPENDENT CLAIM.

AN INDEPENDENT CLAIM IS A CLAIM THAT DOES NOT REFER TO ANY OTHER CLAIM OF THE PATENT. AN INDEPENDENT CLAIM MUST BE READ SEPARATELY FROM THE OTHER CLAIMS TO DETERMINE THE SCOPE OF THE CLAIM.

A DEPENDENT CLAIM IS A CLAIM THAT REFERS TO AT LEAST ONE OTHER CLAIM IN THE PATENT. A DEPENDENT CLAIM INCORPORATES ALL OF THE ELEMENTS OF THE CLAIM TO WHICH THE DEPENDENT CLAIM REFERS, AS WELL AS THE ELEMENTS RECITED IN THE DEPENDENT CLAIM ITSELF.

FOR EXAMPLE, CLAIM 1 OF THE '981 PATENT IS AN INDEPENDENT CLAIM AND RECITES SEVERAL ELEMENTS. CLAIM 16 OF THE '981 PATENT IS A DEPENDENT CLAIM THAT REFERS TO CLAIM 1 AND INCLUDES ADDITIONAL ELEMENTS. FOR EXAMPLE, CLAIM 16 REQUIRES EACH OF THE ELEMENTS OF CLAIM 1 AS WELL AS THE ADDITIONAL ELEMENTS IDENTIFIED IN CLAIM 16 ITSELF.

TO ESTABLISH LITERAL INFRINGEMENT OF CLAIM 16, THE PLAINTIFF MUST SHOW THAT IT IS MORE LIKELY THAN NOT THAT THE DEFENDANT'S ACCUSED PRODUCT INCLUDES EACH AND EVERY ELEMENT OF CLAIM 16.

IF YOU FIND THAT CLAIM 1, FROM WHICH CLAIM 16 DEPENDS, IS NOT LITERALLY INFRINGED, THEN YOU CANNOT FIND THAT CLAIM 16 IS LITERALLY INFRINGED.

AS I HAVE PREVIOUSLY EXPLAINED, CLAIM 1 OF THE '981 PATENT INCLUDES REQUIREMENTS THAT ARE IN MEANS-PLUS-FUNCTION FORM.

A PRODUCT OR PROCESS MEETS A MEANS-PLUS-FUNCTION REQUIREMENT OF A CLAIM IF, (1) IT HAS A STRUCTURE THAT PERFORMS THE IDENTICAL FUNCTION RECITED IN THE CLAIM, AND (2) THAT STRUCTURE IS EITHER IDENTICAL OR EQUIVALENT TO THE DESCRIBED STRUCTURE THAT I DEFINED EARLIER AS PERFORMING THE FUNCTION OF, QUOTE, DETERMINING AN INDICATION OF SPECTRAL CONTENT OF THE INCIDENT LIGHT, END QUOTE. IF THE ACCUSED PRODUCTS DO NOT PERFORM THIS SPECIFIC FUNCTION RECITED IN THE CLAIM, THE MEANS-PLUS-FUNCTION REQUIREMENT IS NOT MET AND THE ACCUSED PRODUCTS DO NOT LITERALLY INFRINGE THE CLAIM.

ALTERNATIVELY, IF THE ACCUSED PRODUCTS HAVE A STRUCTURE THAT PERFORMS THE FUNCTION RECITED IN THE CLAIM BUT THE STRUCTURE IS NOT EITHER IDENTICAL OR EQUIVALENT TO THE STRUCTURE THAT I DEFINED TO YOU AS BEING DESCRIBED IN THE '981 PATENT AND PERFORMING THIS FUNCTION, THE ACCUSED PRODUCTS DO NOT LITERALLY INFRINGE THE ASSERTED CLAIM.

A STRUCTURE MAY BE FOUND TO BE EQUIVALENT TO THE STRUCTURE I HAVE DEFINED AS BEING DESCRIBED IN THE '981 PATENT IF A PERSON HAVING ORDINARY SKILL IN THE FIELD OF TECHNOLOGY OF THE '981 PATENT EITHER WOULD HAVE

CONSIDERED THE DIFFERENCES BETWEEN THEM TO BE INSUBSTANTIAL AT THE TIME THE '981 PATENT ISSUED OR IF THAT PERSON WOULD HAVE FOUND THE STRUCTURE PERFORMED THE FUNCTION IN SUBSTANTIALLY THE SAME WAY TO ACCOMPLISH SUBSTANTIALLY THE SAME RESULT. IN DECIDING WHETHER THE DIFFERENCES WOULD BE INSUBSTANTIAL, YOU MAY CONSIDER WHETHER A PERSON HAVING AN ORDINARY LEVEL OF SKILL IN THE FIELD OF TECHNOLOGY OF THE PATENT WOULD HAVE KNOWN OF THE INTERCHANGEABILITY OF THE TWO STRUCTURES.

INTERCHANGEABILITY ITSELF IS NOT SUFFICIENT. IN ORDER FOR THE STRUCTURES TO BE CONSIDERED TO BE INTERCHANGEABLE, THE INTERCHANGEABILITY OF THE TWO STRUCTURES MUST HAVE BEEN KNOWN TO PERSONS OF ORDINARY SKILL IN THE ART AT THE TIME THE PATENT ISSUED. THE FACT THAT A STRUCTURE IS KNOWN NOW AND IS EQUIVALENT IS NOT ENOUGH. THE STRUCTURE MUST ALSO HAVE BEEN AVAILABLE AT THE TIME THE '981 PATENT ISSUED.

IN ORDER TO PROVE DIRECT INFRINGEMENT BY LITERAL INFRINGEMENT OF A MEANS-PLUS-FUNCTION/STEP-PLUS-FUNCTION LIMITATION, THE PLAINTIFF MUST PROVE THE ABOVE REQUIREMENTS ARE MET BY A PREPONDERANCE OF THE EVIDENCE.

WILLFUL INFRINGEMENT. IN THIS CASE, THE PLAINTIFF ALLEGES BOTH THAT THE DEFENDANT INFRINGED THE '981 PATENT AND FURTHER THAT THE DEFENDANT INFRINGED

WILLFULLY. IF YOU HAVE DECIDED THAT THE DEFENDANT HAS INFRINGED, YOU MUST GO ON AND ADDRESS THE ADDITIONAL ISSUE OF WHETHER OR NOT THIS INFRINGEMENT WAS WILLFUL. WILLFULNESS REQUIRES YOU TO DETERMINE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT ACTED RECKLESSLY.

TO PROVE THAT THE DEFENDANT ACTED RECKLESSLY, THE PLAINTIFF MUST PROVE TWO THINGS BY CLEAR AND CONVINCING EVIDENCE. THE FIRST PART OF THE TEST IS OBJECTIVE: THE PATENT HOLDER MUST PERSUADE YOU THAT THE DEFENDANT ACTED DESPITE A HIGH LIKELIHOOD THAT THE DEFENDANT'S ACTIONS INFRINGED A VALID AND ENFORCEABLE PATENT. IN MAKING THIS DETERMINATION, YOU MAY NOT CONSIDER THE DEFENDANT'S STATE OF MIND. LEGITIMATE OR CREDIBLE DEFENSES TO INFRINGEMENT, EVEN IF NOT ULTIMATELY SUCCESSFUL, DEMONSTRATE A LACK OF RECKLESSNESS.

ONLY IF YOU CONCLUDE THAT THE DEFENDANT'S CONDUCT WAS RECKLESS DO YOU NEED TO CONSIDER THE SECOND PART OF THE TEST. THE SECOND PART OF THE TEST DOES DEPEND ON THE STATE OF MIND OF THE DEFENDANT. THE PLAINTIFF MUST PERSUADE YOU THAT THE DEFENDANT ACTUALLY KNEW OR SHOULD HAVE KNOWN THAT ITS ACTIONS CONSTITUTED AN UNJUSTIFIABLY HIGH RISK OF INFRINGEMENT OF A VALID AND ENFORCEABLE PATENT. TO DETERMINE WHETHER INTERSIL HAD THIS STATE OF MIND, CONSIDER ALL OF THE FACTS WHICH

MAY INCLUDE BUT ARE NOT LIMITED TO:

1. WHETHER OR NOT THE DEFENDANT ACTED IN ACCORDANCE WITH THE STANDARDS OF COMMERCE FOR ITS INDUSTRY;

2. WHETHER OR NOT THE DEFENDANT INTENTIONALLY COPIED A PRODUCT OF THE PLAINTIFF THAT IS COVERED BY THE '981 PATENT;

3. WHETHER OR NOT THERE IS A REASONABLE BASIS TO BELIEVE THAT THE DEFENDANT DID NOT INFRINGE OR HAD A REASONABLE DEFENSE TO INFRINGEMENT;

4. WHETHER OR NOT THE DEFENDANT MADE A GOOD-FAITH EFFORT TO AVOID INFRINGING THE '981 PATENT, FOR EXAMPLE, WHETHER THE DEFENDANT ATTEMPTED TO DESIGN AROUND THE '981 PATENT;

5. WHETHER OR NOT THE DEFENDANT TRIED TO COVER UP ITS INFRINGEMENT; AND

6. THE DEFENDANT ARGUES THAT IT DID NOT ACT RECKLESSLY BECAUSE IT RELIED ON A LEGAL OPINION THAT ADVISED THE DEFENDANT EITHER, (1) THAT THE DEFENDANT'S PRODUCT DID NOT INFRINGE THE '981 PATENT OR (2) THAT THE '981 PATENT WAS INVALID OR UNENFORCEABLE. YOU MUST EVALUATE WHETHER THE OPINION WAS OF A QUALITY THAT RELIANCE ON ITS CONCLUSIONS WAS REASONABLE.

PATENT INVALIDITY. I WILL NOW INSTRUCT YOU ON THE RULES YOU MUST FOLLOW IN DECIDING WHETHER OR NOT

THE DEFENDANT HAS PROVEN THAT CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT ARE INVALID. TO PROVE THAT ANY CLAIM OF A PATENT IS INVALID, THE DEFENDANT MUST PERSUADE YOU BY CLEAR AND CONVINCING EVIDENCE THAT THE CLAIM IS INVALID.

ONCE A PATENT IS ISSUED, IT IS PRESUMED TO BE VALID. THAT MEANS THAT THE FACT THAT THE PATENT WAS ISSUED TO A PARTICULAR PERSON DOES NOT GUARANTEE THAT THE PATENT IS VALID, BUT ONCE IT ISSUES, THE LAW SAYS THAT IF A CHALLENGER WANTS TO SHOW THAT IT IS INVALID, THE CHALLENGER HAS TO MAKE THAT SHOWING BY CLEAR AND CONVINCING EVIDENCE. SO PATENT INVALIDITY IS ONE OF THE ISSUES IN THIS CASE TO WHICH THE CLEAR AND CONVINCING EVIDENCE STANDARD APPLIES. IN DECIDING WHETHER PARTICULAR CLAIMS ARE INVALID, YOU WILL INTERPRET THE CLAIMS IN THE SAME WAY THAT YOU HAVE IN DECIDING INFRINGEMENT.

THE PATENT LAW CONTAINS CERTAIN REQUIREMENTS FOR THE PART OF THE PATENT CALLED THE SPECIFICATION. THE DEFENDANT CONTENDS THAT CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT ARE INVALID BECAUSE THE SPECIFICATION OF THE '981 PATENT DOES NOT CONTAIN AN ADEQUATE WRITTEN DESCRIPTION OF THE INVENTION. TO SUCCEED, THE DEFENDANT MUST SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE SPECIFICATION FAILS TO

MEET THE LAW'S REQUIREMENTS FOR WRITTEN DESCRIPTION OF THE INVENTION. IN THE PATENT APPLICATION PROCESS, THE APPLICANT MAY KEEP THE ORIGINALLY FILED CLAIMS OR CHANGE THE CLAIMS BETWEEN THE TIME THE PATENT APPLICATION IS FIRST FILED AND THE TIME THE PATENT IS ISSUED. AN APPLICANT MAY AMEND THE CLAIMS OR ADD NEW CLAIMS. THESE CHANGES MAY NARROW OR BROADEN THE SCOPE OF THE CLAIMS. THE WRITTEN DESCRIPTION REQUIREMENT ENSURES THAT THE ISSUED CLAIMS CORRESPOND TO THE SCOPE OF THE WRITTEN DESCRIPTION THAT WAS PROVIDED FOR THE ORIGINAL APPLICATION.

IN DECIDING WHETHER THE PATENT SATISFIES THIS WRITTEN DESCRIPTION REQUIREMENT, YOU MUST CONSIDER THE DESCRIPTION FROM THE VIEWPOINT OF A PERSON HAVING ORDINARY SKILL IN THE FIELD OF TECHNOLOGY OF THE PATENT WHEN THE PATENT -- WHEN THE APPLICATION WAS FILED. THE WRITTEN DESCRIPTION REQUIREMENT IS SATISFIED IF A PERSON HAVING ORDINARY SKILL READING THE ORIGINAL PATENT APPLICATION WOULD HAVE RECOGNIZED THAT IT DESCRIBES THE FULL SCOPE OF THE CLAIMED INVENTION AS IT IS FINALLY CLAIMED IN THE ISSUED PATENT AND THAT THE INVENTOR ACTUALLY POSSESSED THAT FULL SCOPE OF THE FILING -- EXCUSE ME -- THAT THE INVENTOR ACTUALLY POSSESSED THAT FULL SCOPE BY THE FILING DATE OF THE ORIGINAL APPLICATION.

THE WRITTEN DESCRIPTION REQUIREMENT MAY BE SATISFIED BY ANY COMBINATION OF THE WORDS, STRUCTURES, FIGURES, DIAGRAMS, FORMULAS CONTAINED IN THE PATENT APPLICATION. THE FULL SCOPE OF A CLAIM OR ANY PARTICULAR REQUIREMENT IN A CLAIM NEED NOT BE EXPRESSLY DISCLOSED IN THE ORIGINAL PATENT APPLICATION IF A PERSON HAVING ORDINARY SKILL IN THE FIELD OF TECHNOLOGY OF THE PATENT AT THE TIME OF THE FILING WOULD HAVE UNDERSTOOD THAT THE FULL SCOPE OR MISSING REQUIREMENT IS IN THE WRITTEN DESCRIPTION IN THE PATENT APPLICATION.

ALL RIGHT, NOW, LADIES AND GENTLEMEN, KEEP IN MIND, WE'RE UNDER ROMAN NUMERAL 3, PATENT INVALIDITY. THESE ARE ASSERTIONS BY THE DEFENDANT, INTERSIL. WE'VE COVERED THE WRITTEN DESCRIPTION REQUIREMENT. NOW, I'M GOING TO MOVE TO THE NEXT ARGUMENT BY INTERSIL INVOLVING ENABLEMENT.

THE DEFENDANT ALSO CONTENDS THAT CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT ARE INVALID BECAUSE THE SPECIFICATION DOES NOT CONTAIN A SUFFICIENTLY FULL AND CLEAR DESCRIPTION OF HOW TO MAKE AND USE THE FULL SCOPE OF THE CLAIMED INVENTION. TO SUCCEED, THE DEFENDANT MUST SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE '981 PATENT DOES NOT CONTAIN A SUFFICIENTLY FULL AND CLEAR DESCRIPTION OF THE CLAIMED INVENTION. TO BE SUFFICIENTLY FULL AND CLEAR, THE

DESCRIPTION MUST CONTAIN ENOUGH INFORMATION TO HAVE ALLOWED A PERSON HAVING ORDINARY SKILL IN THE FIELD OF TECHNOLOGY OF THE PATENT TO MAKE AND USE THE FULL SCOPE OF THE CLAIMED INVENTION AT THE TIME THE PATENT APPLICATION WAS FILED. THIS IS KNOWN AS THE ENABLEMENT REQUIREMENT. IF A PATENT CLAIM IS NOT ENABLED, IT IS INVALID.

IN ORDER TO BE ENABLING, THE PATENT MUST PERMIT PERSONS HAVING ORDINARY SKILL IN THE FIELD OF TECHNOLOGY OF THE PATENT TO MAKE AND USE THE FULL SCOPE OF THE CLAIMED INVENTION AT THE TIME OF FILING WITHOUT HAVING TO CONDUCT UNDUE EXPERIMENTATION. HOWEVER, SOME AMOUNT OF EXPERIMENTATION TO MAKE AND USE THE INVENTION IS ALLOWABLE. IN DECIDING WHETHER A PERSON HAVING ORDINARY SKILL WOULD HAVE TO EXPERIMENT UNDULY IN ORDER TO MAKE AND USE THE INVENTION, YOU MAY CONSIDER SEVERAL FACTORS:

1. THE TIME AND COST OF ANY NECESSARY EXPERIMENTATION;

2. HOW ROUTINE ANY NECESSARY EXPERIMENTATION IS IN THE FIELD OF INVENTION;

3. WHETHER THE PATENT DISCLOSES SPECIFIC WORKING EXAMPLES OF THE CLAIMED INVENTION;

4. THE AMOUNT OF GUIDANCE PRESENTED IN THE PATENT;

5. THE NATURE AND PREDICTABILITY OF THE FIELD OF INVENTION;

6. THE LEVEL OF ORDINARY SKILL IN THE FIELD OF INVENTION; AND

7. THE SCOPE OF THE CLAIMED INVENTION.

NO ONE OR MORE OF THESE FACTORS IS ALONE DISPOSITIVE. RATHER, YOU MUST MAKE YOUR DECISION WHETHER THE DEGREE OF EXPERIMENTATION REQUIRED IS UNDUE BASED UPON ALL OF THE EVIDENCE PRESENTED TO YOU. YOU SHOULD WEIGH THESE FACTORS AND DETERMINE WHETHER OR NOT IN THE CONTEXT OF THIS INVENTION AND THE STATE OF THE ART AT THE TIME OF THE APPLICATION A PERSON HAVING ORDINARY SKILL WOULD NEED TO EXPERIMENT UNDULY TO MAKE AND USE THE FULL SCOPE OF THE CLAIMED INVENTION.

OBVIOUSNESS. PRIOR ART. EVEN THOUGH AN INVENTION MAY NOT HAVE BEEN IDENTICALLY DISCLOSED OR DESCRIBED BEFORE IT WAS MADE BY AN INVENTOR, IN ORDER TO BE PATENTABLE, THE INVENTION MUST ALSO NOT HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE FIELD OF THE TECHNOLOGY OF THE PATENT AT THE TIME THE INVENTION WAS MADE. IN THIS CASE, THE DEFENDANT CONTENDS THAT CLAIMS 16, 17, 18, 43, 45, AND 46 OF THE '981 PATENT ARE INVALID AS OBVIOUS.

THE DEFENDANT MAY ESTABLISH THAT A PATENT CLAIM IS INVALID BY SHOWING BY CLEAR AND CONVINCING

EVIDENCE THAT THE CLAIMED INVENTION WOULD HAVE BEEN OBVIOUS TO PERSONS HAVING ORDINARY SKILL IN THE ART AT THE TIME THE INVENTION WAS MADE IN THE FIELD OF INVENTION.

IN DETERMINING WHETHER A CLAIMED INVENTION IS OBVIOUS, YOU MUST CONSIDER THE LEVEL OF ORDINARY SKILL IN THE FIELD OF THE INVENTION THAT SOMEONE WOULD HAVE HAD AT THE TIME THE INVENTION WAS MADE, THE SCOPE AND CONTENT OF THE PRIOR ART, AND ANY DIFFERENCES BETWEEN THE PRIOR ART AND THE CLAIMED INVENTION.

KEEP IN MIND THAT THE EXISTENCE OF EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION IN THE PRIOR ART DOES NOT NECESSARILY PROVE OBVIOUSNESS. MOST IF NOT ALL INVENTIONS RELY ON BUILDING BLOCKS OF PRIOR ART.

IN CONSIDERING WHETHER A CLAIMED INVENTION IS OBVIOUS, YOU MAY, BUT ARE NOT REQUIRED TO, FIND OBVIOUSNESS IF YOU FIND THAT AT THE TIME OF THE CLAIMED INVENTION THERE WAS A REASON THAT WOULD HAVE PROMPTED A PERSON HAVING ORDINARY SKILL IN THE FIELD OF INVENTION -- OF THE INVENTION TO COMBINE THE KNOWN ELEMENTS IN A WAY THE CLAIMED INVENTION DOES, TAKING INTO ACCOUNT SUCH FACTORS AS:

1. WHETHER THE CLAIMED INVENTION WAS MERELY THE PREDICTABLE RESULT OF USING PRIOR ART ELEMENTS ACCORDING TO THEIR KNOWN FUNCTIONS;

2. WHETHER THE CLAIMED INVENTION PROVIDES AN OBVIOUS SOLUTION TO A KNOWN PROBLEM IN THE RELEVANT FIELD;

3. WHETHER THE PRIOR ART TEACHES OR SUGGESTS THE DESIRABILITY OF COMBINING ELEMENTS CLAIMED IN THE INVENTION;

4. WHETHER THE PRIOR ART TEACHES AWAY FROM COMBINING ELEMENTS IN THE CLAIMED INVENTION;

5. WHETHER IT WOULD HAVE BEEN OBVIOUS TO TRY THE COMBINATIONS OF ELEMENTS SUCH AS WHEN THERE IS A DESIGN NEED OR MARKET PRESSURE TO SOLVE A PROBLEM AND THERE ARE A FINITE NUMBER OF IDENTIFIED, PREDICTABLE SOLUTIONS; AND

6. WHETHER THE CHANGE RESULTED MORE FROM DESIGN INCENTIVES OR OTHER MARKET FORCES.

TO FIND IT RENDERED THE INVENTION OBVIOUS, YOU MUST FIND THAT THE PRIOR ART PROVIDED A REASONABLE EXPECTATION OF SUCCESS. OBVIOUS TO TRY IS NOT SUFFICIENT IN UNPREDICTABLE TECHNOLOGIES.

IN DETERMINING WHETHER THE CLAIMED INVENTION WAS OBVIOUS, CONSIDER EACH CLAIM SEPARATELY. DO NOT USE HINDSIGHT; I.E., DO NOT -- I'M SORRY. CONSIDER ONLY WHAT WAS KNOWN AT THE TIME OF THE INVENTION.

IN MAKING THESE ASSESSMENTS, YOU SHOULD

TAKE INTO ACCOUNT ANY OBJECTIVE EVIDENCE, SOMETIMES CALLED SECONDARY CONSIDERATIONS, THAT MAY SHED LIGHT ON THE OBVIOUSNESS OR NOT OF THE CLAIMED INVENTION, SUCH AS:

A. WHETHER THE INVENTION WAS COMMERCIALLY SUCCESSFUL AS A RESULT OF THE MERITS OF THE CLAIMED INVENTION (RATHER THAN THE RESULT OF DESIGN NEEDS OR MARKET PRESSURE ADVERTISING OR SIMILAR ACTIVITIES);

B. WHETHER THE INVENTION SATISFIED A LONG FELT NEED;

C. WHETHER OTHERS HAD TRIED AND FAILED TO MAKE THE INVENTION;

D. WHETHER OTHERS INVENTED THE INVENTION AT ROUGHLY THE SAME TIME;

E. WHETHER OTHERS COPIED THE INVENTION;

F. WHETHER THERE WERE CHANGES OR RELATED TECHNOLOGIES OR MARKET NEEDS CONTEMPORANEOUS WITH THE INVENTION;

G. WHETHER THE INVENTION ACHIEVED UNEXPECTED RESULTS;

H. WHETHER OTHERS IN THE FIELD PRAISED THE INVENTION;

I. WHETHER PERSONS HAVING ORDINARY SKILL IN THE ART OF THE INVENTION EXPRESSED SURPRISE OR DISBELIEF REGARDING THE INVENTION;

J. WHETHER OTHERS SOUGHT OR OBTAINED RIGHTS TO THE PATENT FROM THE PATENT HOLDER; AND

K. WHETHER THE INVENTOR PROCEEDED CONTRARY TO ACCEPTED WISDOM IN THE FIELD.

ALL RIGHT. LADIES AND GENTLEMEN, NOW I'M GOING TO MOVE INTO EQUITABLE DEFENSES. THE FIRST ONE IS LACHES. THE DEFENDANT CONTENDS THAT THE PLAINTIFF IS NOT ENTITLED TO RECOVER DAMAGES FOR ACTS THAT OCCURRED BEFORE IT FILED THE LAWSUIT BECAUSE: (1) THE PLAINTIFF DELAYED FILING THE LAWSUIT FOR AN UNREASONABLY LONG AND INEXCUSABLE PERIOD OF TIME AND (2) THE DEFENDANT HAS BEEN OR WILL BE PREJUDICED IN A SIGNIFICANT WAY DUE TO THE PLAINTIFF'S DELAY IN FILING THE LAWSUIT. THIS IS REFERRED TO AS LACHES. THE DEFENDANT MUST PROVE DELAY AND PREJUDICE BY A PREPONDERANCE OF THE EVIDENCE.

WHETHER THE PLAINTIFF'S DELAY WAS UNREASONABLY WRONG AND UNJUSTIFIED IS A QUESTION THAT MUST BE ANSWERED BY CONSIDERING THE FACTS AND CIRCUMSTANCES AS THEY EXISTED DURING THE PERIOD OF DELAY. THERE IS NO MINIMUM AMOUNT OF DELAY REQUIRED TO ESTABLISH LACHES. IF A SUIT WAS DELAYED FOR SIX YEARS, A REBUTTABLE PRESUMPTION ARISES THAT THE DELAY WAS UNREASONABLE AND UNJUSTIFIED AND THAT MATERIAL PREJUDICE RESULTED. THIS PRESUMPTION SHIFTS THE BURDEN OF PROOF TO THE PLAINTIFF TO COME FORWARD WITH EVIDENCE TO PROVE

THAT THE DELAY WAS JUSTIFIED OR THAT MATERIAL PREJUDICE DID NOT RESULT. AND IF THE PLAINTIFF PRESENTS SUCH EVIDENCE, THE BURDEN OF PROVING LACHES REMAINS WITH THE DEFENDANT.

LACHES MAY BE FOUND FOR DELAYS OF LESS THAN SIX YEARS IF THERE IS PROOF OF UNREASONABLY LONG AND UNJUSTIFIABLE DELAY CAUSING MATERIAL PREJUDICE TO THE DEFENDANT. FACTS AND CIRCUMSTANCES THAT CAN JUSTIFY A LONG DELAY CAN INCLUDE:

1. BEING INVOLVED IN OTHER LITIGATION DURING THE PERIOD OF DELAY;

2. BEING INVOLVED IN NEGOTIATIONS WITH THE DEFENDANT DURING THE PERIOD OF DELAY;

3. POVERTY OR ILLNESS DURING THE PERIOD OF DELAY;

4. WARTIME CONDITIONS DURING THE PERIOD OF DELAY;

5. BEING INVOLVED IN A DISPUTE ABOUT OWNERSHIP OF THE PATENT DURING THE PERIOD OF DELAY; OR

6. MINIMAL AMOUNTS OF ALLEGEDLY INFRINGING ACTIVITY BY THE DEFENDANT DURING THE PERIOD OF DELAY.

IF YOU FIND UNREASONABLE AND UNJUSTIFIED DELAY OCCURRED, TO FIND LACHES, YOU MUST ALSO DETERMINE IF THE DEFENDANT SUFFERED MATERIAL PREJUDICE AS A RESULT OF THE DELAY. PREJUDICE TO THE DEFENDANT CAN BE

EVIDENTIARY OR ECONOMIC. WHETHER THE DEFENDANT SUFFERED EVIDENTIARY PREJUDICE IS A QUESTION THAT MUST BE ANSWERED BY EVALUATING WHETHER DELAY IN FILING THIS CASE RESULTED IN THE DEFENDANT NOT BEING ABLE TO PRESENT A FULL AND FAIR DEFENSE ON THE MERITS OF THE PLAINTIFF'S INFRINGEMENT CLAIM. NOT BEING ABLE TO PRESENT A FULL AND FAIR DEFENSE ON THE MERITS TO AN INFRINGEMENT CLAIM CAN OCCUR DUE TO THE LOSS OF IMPORTANT RECORDS, THE DEATH OR IMPAIRMENT OF AN IMPORTANT WITNESS OR WITNESSES, THE UNRELIABILITY OF MEMORIES ABOUT IMPORTANT EVENTS BECAUSE THEY OCCURRED IN THE DISTANT PAST, OR OTHER SIMILAR TYPES OF THINGS.

ECONOMIC PREJUDICE IS DETERMINED BY WHETHER OR NOT INTERSIL CHANGED ITS ECONOMIC POSITION IN A SIGNIFICANT WAY DURING THE PERIOD OF DELAY RESULTING IN LOSSES BEYOND MERELY PAYING FOR INFRINGEMENT (SUCH AS IF THE DEFENDANT COULD HAVE SWITCHED TO A NONINFRINGING PRODUCT IF SUED EARLIER), AND ALSO WHETHER THE DEFENDANT'S LOSSES AS A RESULT OF THAT CHANGE IN ECONOMIC POSITION LIKELY WOULD HAVE BEEN AVOIDED IF THE PLAINTIFF HAD FILED THIS LAWSUIT SOONER.

IN ALL SCENARIOS, THOUGH, THE ULTIMATE DETERMINATION OF WHETHER LACHES SHOULD APPLY IN THIS CASE IS A QUESTION OF FAIRNESS, GIVEN ALL THE FACTS AND CIRCUMSTANCES. THUS, YOU MAY FIND THAT LACHES DOES NOT

APPLY IF THERE IS NO EVIDENCE ESTABLISHING EACH OF THE THREE ELEMENTS NOTED ABOVE ON REASONABLE DELAY, (LACK OF EXCUSE OR JUSTIFICATION, AND SIGNIFICANT PREJUDICE). YOU MAY ALSO FIND THAT EVEN THOUGH ALL OF THE ELEMENTS OF LACHES HAVE BEEN PROVED, IT SHOULD NOT, IN FAIRNESS, APPLY, GIVEN ALL THE FACTS AND CIRCUMSTANCES IN THE CASE.

THE NEXT EQUITABLE DEFENSE IS CALLED UNCLEAN HANDS. THE OWNER OF A PATENT MAY BE BARRED FROM ENFORCING THE PATENT AGAINST AN INFRINGER WHERE THE OWNER OF THE PATENT ACTS OR ACTED INEQUITABLY, UNFAIRLY, OR DECEITFULLY TOWARD THE INFRINGER OR THE COURT IN A WAY THAT HAS IMMEDIATE AND NECESSARY RELATION TO THE RELIEF THAT THE PATENT HOLDER SEEKS IN A LAWSUIT. THIS IS REFERRED TO AS UNCLEAN HANDS, AND IT IS A DEFENSE THAT THE DEFENDANT CONTENDS PRECLUDES ANY RECOVERY BY THE PLAINTIFF IN THIS LAWSUIT.

YOU MUST CONSIDER AND WEIGH ALL THE FACTS AND CIRCUMSTANCES TO DETERMINE WHETHER YOU BELIEVE THAT ON BALANCE THE PLAINTIFF ACTED IN SUCH AN UNFAIR WAY TOWARD THE DEFENDANT OR THE COURT IN THE MATTERS RELATING TO THE CONTROVERSY BETWEEN THE PLAINTIFF AND THE DEFENDANT THAT, IN FAIRNESS, THE PLAINTIFF SHOULD BE DENIED THE RELIEF IT SEEKS IN THIS LAWSUIT. THE DEFENDANT MUST PROVE UNCLEAN HANDS BY A PREPONDERANCE OF

THE EVIDENCE.

PATENT DAMAGES. IF YOU FIND THAT THE DEFENDANT INFRINGED ANY VALID CLAIM OF THE '981 PATENT, YOU MUST THEN CONSIDER WHAT AMOUNT OF DAMAGES TO AWARD TO THE PLAINTIFF. I WILL NOW INSTRUCT YOU ABOUT THE MEASURE OF DAMAGES. BY INSTRUCTING YOU ON DAMAGES, I AM NOT SUGGESTING WHICH PARTIES SHOULD WIN THIS CASE ON ANY ISSUE.

THE DAMAGES YOU AWARD MUST BE ADEQUATE TO COMPENSATE THE PLAINTIFF FOR THE INFRINGEMENT. THEY ARE NOT MEANT TO PUNISH AN INFRINGER. YOUR DAMAGES AWARD, IF YOU REACH THIS ISSUE, SHOULD PUT THE PLAINTIFF IN APPROXIMATELY THE SAME FINANCIAL CONDITION -- POSITION THAT IT WOULD HAVE BEEN IN HAD THE INFRINGEMENT NOT OCCURRED.

THE PLAINTIFF HAS THE BURDEN OF ESTABLISHING -- I'M SORRY. THE PLAINTIFF HAS THE BURDEN TO ESTABLISH THE AMOUNT OF ITS DAMAGES BY A PREPONDERANCE OF THE EVIDENCE. IN OTHER WORDS, YOU SHOULD AWARD ONLY THOSE DAMAGES THAT THE PLAINTIFF ESTABLISHES THAT IT MORE LIKELY THAN NOT SUFFERED.

THERE ARE DIFFERENT TYPES OF DAMAGES THAT THE PLAINTIFF MAY BE ENTITLED TO RECOVER. IN THIS CASE, THE PLAINTIFF SEEKS A REASONABLE ROYALTY. A REASONABLE ROYALTY IS DEFINED AS THE MONEY AMOUNT THE PLAINTIFF AND

THE DEFENDANT WOULD HAVE AGREED UPON AS A FEE FOR USE OF THE INVENTION AT THE TIME PRIOR TO WHEN THE INFRINGEMENT BEGAN. IF YOU FIND THAT THE DEFENDANT HAS ESTABLISHED INFRINGEMENT, THE PLAINTIFF IS ENTITLED TO A REASONABLE ROYALTY TO COMPENSATE IT FOR THAT INFRINGEMENT.

IN DETERMINING THE AMOUNT OF DAMAGES, YOU MUST DETERMINE WHEN THE DAMAGES BEGAN. DAMAGES COMMENCE ON THE DATE THAT THE DEFENDANT HAS BOTH INFRINGED AND BEEN NOTIFIED OF THE ALLEGED INFRINGEMENT OF THE '981 PATENT.

IF YOU FIND THAT THE PLAINTIFF SELLS A PRODUCT THAT INCLUDES THE CLAIMED INVENTION, YOU MUST DETERMINE WHETHER THE PLAINTIFF HAS MARKED THAT PRODUCT WITH THE PATENT NUMBER. "MARKING" IS PLACED EITHER -- I'M SORRY. "MARKING" IS PLACING EITHER THE WORD, "PATENT," OR THE ABBREVIATION, "PAT." WITH THE PATENT'S NUMBER ON SUBSTANTIALLY ALL OF THE PRODUCTS THAT INCLUDE THE PATENTED INVENTION. THE PLAINTIFF HAS THE BURDEN OF ESTABLISHING THAT IT SUBSTANTIALLY COMPLIED WITH THE MARKING REQUIREMENT. THIS MEANS THE PLAINTIFF MUST SHOW THAT IT MARKED SUBSTANTIALLY ALL OF THE PRODUCTS IT MADE, OFFERED FOR SALE, OR SOLD UNDER THE '981 PATENT.

IF THE PLAINTIFF HAS NOT MARKED THAT PRODUCT WITH THE PATENT NUMBER, YOU MUST DETERMINE THE

DATE THAT THE DEFENDANT RECEIVED ACTUAL NOTICE OF THE '981 PATENT AND THE SPECIFIC PRODUCT ALLEGED TO INFRINGE. ACTUAL NOTICE MEANS THAT THE PLAINTIFF COMMUNICATED TO THE DEFENDANT A SPECIFIC CHARGE OF INFRINGEMENT OF THE '981 PATENT BY A SPECIFIC ACCUSED PRODUCT OR DEVICE. THE FILING OF THE COMPLAINT IN THIS CASE QUALIFIES AS ACTUAL NOTICE, SO THE DAMAGES PERIOD -- PERIOD BEGINS NO LATER THAN THE DATE THE COMPLAINT WAS FILED.

HOWEVER, THE PLAINTIFF CLAIMS TO HAVE PROVIDED ACTUAL NOTICE PRIOR TO THE FILING OF THE COMPLAINT, ON APRIL 6, 2006, WHEN IT SENT AN E-MAIL TO THE DEFENDANT. THE PLAINTIFF HAS THE BURDEN OF ESTABLISHING THAT IT IS MORE PROBABLE THAN NOT THE DEFENDANT RECEIVED NOTICE OF INFRINGEMENT ON APRIL 6, 2006.

A ROYALTY IS A PAYMENT MADE TO A PATENT OWNER IN EXCHANGE FOR THE RIGHT TO MAKE, USE, OR SELL THE CLAIMED INVENTION. A REASONABLE ROYALTY IS THE AMOUNT OF ROYALTY PAYMENT THAT A PATENT HOLDER AND THE INFRINGER WOULD HAVE AGREED TO IN A HYPOTHETICAL NEGOTIATION TAKING PLACE AT A TIME PRIOR TO WHEN THE INFRINGEMENT FIRST BEGAN. IN CONSIDERING THIS HYPOTHETICAL NEGOTIATION, YOU SHOULD FOCUS ON WHAT THE EXPECTATIONS OF THE PATENT HOLDER AND THE INFRINGER

WOULD HAVE BEEN HAD THEY ENTERED INTO AN AGREEMENT AT THAT TIME AND HAD THEY ACTED REASONABLY IN THEIR NEGOTIATIONS. IN DETERMINING THIS, YOU MUST ASSUME THAT BOTH PARTIES BELIEVED THE PATENT WAS VALID AND INFRINGED AND THE PATENT HOLDER AND INFRINGER WERE WILLING TO ENTER INTO AN AGREEMENT. THE REASONABLE ROYALTY YOU DETERMINE MUST BE A ROYALTY THAT WOULD HAVE RESULTED FROM THE HYPOTHETICAL NEGOTIATION, AND NOT SIMPLY A ROYALTY EITHER PARTY WOULD HAVE PREFERRED.

EVIDENCE OF THINGS THAT HAPPENED AFTER THE INFRINGEMENT FIRST BEGAN CAN BE CONSIDERED IN EVALUATING THE REASONABLE ROYALTY ONLY TO THE EXTENT THAT THE EVIDENCE AIDS IN ASSESSING THAT -- WHAT ROYALTY WOULD HAVE RESULTED FROM A HYPOTHETICAL NEGOTIATION. ALTHOUGH EVIDENCE OF THE ACTUAL PROFITS AN ALLEGED INFRINGER MADE MAY BE USED TO DETERMINE THE ANTICIPATED PROFITS AT THE TIME OF THE HYPOTHETICAL NEGOTIATION, THE ROYALTY MAY NOT BE LIMITED OR INCREASED BASED ON THE ACTUAL PROFITS THE ALLEGED INFRINGER MADE.

IN DETERMINING THE REASONABLE ROYALTY, YOU SHOULD CONSIDER ALL THE FACTS KNOWN AND AVAILABLE TO THE PARTIES AT THE TIME OF THE INFRINGEMENT BEGAN. SOME OF THE KINDS OF FACTORS THAT YOU MAY CONSIDER IN MAKING YOUR DETERMINATION ARE:

1. THE ROYALTIES RECEIVED BY THE PATENTEE

FOR THE LICENSING OF THE PATENT IN SUIT, PROVING OR TENDING TO PROVE AN ESTABLISHED ROYALTY;

2. THE RATES PAID BY THE LICENSEE FOR THE USE OF OTHER PATENTS COMPARABLE TO THE PATENT IN SUIT;

3. THE NATURE AND THE SCOPE OF THE LICENSE AS EXCLUSIVE OR NONEXCLUSIVE OR AS RESTRICTED OR NONRESTRICTED IN TERMS OF TERRITORY OR WITH RESPECT TO WHOM THE MANUFACTURED PRODUCT MAY BE SOLD;

4. THE LICENSOR'S ESTABLISHED POLICY AND MARKETING PROGRAM TO MAINTAIN HIS OR HER PATENT MONOPOLY BY NOT LICENSING OTHERS TO USE THE INVENTION OR GRANTING LICENSES UNDER SPECIAL CONDITIONS DESIGNED TO PRESERVE THAT MONOPOLY;

5. THE COMMERCIAL RELATIONSHIP BETWEEN THE LICENSOR AND THE LICENSEE SUCH AS WHETHER THEY ARE COMPETITORS IN THE SAME TERRITORY IN THE SAME LINE OF BUSINESS OR WHETHER THEY ARE INVENTOR AND PROMOTER;

6. THE EFFECT OF SELLING THE PATENTED SPECIALTY IN PROMOTING SALES OF OTHER PRODUCTS OF THE LICENSEE, THE EXISTING VALUE OF THE INVENTION TO THE LICENSOR AS A GENERATOR OF SALES OF HIS NONPATENTED ITEMS, AND THE EXTENT OF SUCH DERIVATIVE OR CONVOYED SALES;

7. THE DURATION OF THE PATENT AND THE TERMS OF THE LICENSE;

8. THE ESTABLISHED PROFITABILITY OF A PRODUCT MADE UNDER THE PATENTS, ITS COMMERCIAL SUCCESS, AND ITS CURRENT POPULARITY;

9. THE UTILITY AND ADVANTAGES OF THE PATENTED PROPERTY OVER THE OLD MODES OR DEVICES, IF ANY, THAT HAD BEEN USED FOR WORKING OUT SIMILAR RESULTS;

10. THE NATURE OF THE PATENTED INVENTION, THE CHARACTER OF THE COMMERCIAL EMBODIMENT OF IT AS OWNED AND PRODUCED BY THE LICENSOR, AND THE BENEFITS TO THOSE WHO HAVE USED THE INVENTION;

11. THE EXTENT TO WHICH THE INFRINGER HAS MADE USE OF THE INVENTION AND ANY EVIDENCE PROBATIVE OF THE VALUE OF THAT USE;

12. THE PORTION OF THE PROFIT OR OF THE SELLING PRICE THAT MAY BE CUSTOMARY IN THE PARTICULAR BUSINESS OR IN COMPARABLE BUSINESS TO ALLOW FOR THE USE OF THE INVENTION OR ANALOGOUS INVENTIONS.

13. THE PORTION OF THE REALIZABLE PROFITS THAT SHOULD BE CREDITED TO THE INVENTION AS DISTINGUISHED FROM NONPATENTED ELEMENTS, THE MANUFACTURING PROCESS, BUSINESS RISKS, OR SIGNIFICANT FEATURES OR IMPROVEMENTS ADDED BY THE INFRINGER;

14. THE OPINION AND TESTIMONY OF QUALIFIED EXPERTS;

15. THE AMOUNT THAT A LICENSOR (SUCH AS

THE PATENTEE) AND A LICENSEE (SUCH AS THE INFRINGER) WOULD HAVE AGREED UPON (AT THE TIME THE INFRINGEMENT BEGAN) IF BOTH HAD BEEN REASONABLY AND VOLUNTARILY TRYING TO REACH AN AGREEMENT, THAT IS, THE AMOUNT THAT A PRUDENT LICENSEE WHO DESIRED AS A BUSINESS PROPOSITION TO OBTAIN A LICENSE TO MANUFACTURE AND SELL A PARTICULAR ARTICLE EMBODYING THE PATENTED INVENTION WOULD HAVE BEEN WILLING TO PAY AS A ROYALTY AND YET BE ABLE TO MAKE A REASONABLE PROFIT AND WHICH AMOUNT WOULD HAVE BEEN ACCEPTABLE BY A PRUDENT PATENTEE WHO WAS WILLING TO GRANT A LICENSE;

16. ANY OTHER ECONOMIC FACTOR THAT A NORMALLY PRUDENT BUSINESS PERSON WOULD, UNDER SIMILAR CIRCUMSTANCES, TAKE INTO CONSIDERATION IN NEGOTIATING THE HYPOTHETICAL LICENSE.

NO ONE FACTOR IS DISPOSITIVE, AND YOU CAN AND SHOULD CONSIDER THE EVIDENCE THAT HAS BEEN PRESENTED TO YOU IN THIS CASE ON EACH OF THESE FACTORS. YOU MAY ALSO CONSIDER ANY OTHER FACTORS WHICH IN YOUR MIND WOULD HAVE INCREASED OR DECREASED THE ROYALTY THE INFRINGER WOULD HAVE BEEN WILLING TO PAY AND THE PATENT HOLDER WOULD HAVE BEEN WILLING TO ACCEPT, ACTING AS NORMALLY PRUDENT BUSINESS PEOPLE.

THE FINAL FACTOR ESTABLISHES THE FRAMEWORK WHICH YOU SHOULD USE IN DETERMINING A REASONABLE

ROYALTY, THAT IS, THE PAYMENT THAT WOULD HAVE RESULTED FROM A NEGOTIATION BETWEEN THE PATENT HOLDER AND THE INFRINGER TAKING PLACE AT A TIME PRIOR TO WHEN THE INFRINGEMENT BEGAN.

IT IS NOW YOUR DUTY TO DELIBERATE AND TO CONSULT WITH ONE ANOTHER IN AN EFFORT TO REACH A VERDICT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE WITH YOUR FELLOW JURORS. DURING YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN OPINIONS AND CHANGE YOUR MIND IF YOU ARE CONVINCED THAT YOU WERE WRONG. BUT DO NOT GIVE UP ON YOUR HONEST BELIEFS BECAUSE THE OTHER JURORS THINK DIFFERENTLY OR JUST TO FINISH THE CASE.

REMEMBER AT ALL TIMES, YOU ARE THE JUDGES OF THE FACTS. YOU HAVE BEEN ALLOWED TO TAKE NOTES DURING THIS TRIAL. ANY NOTES THAT YOU TOOK DURING THIS TRIAL ARE ONLY AIDS TO YOUR MEMORY. IF YOUR MEMORY DIFFERS FROM YOUR NOTES, YOU SHOULD RELY ON YOUR MEMORY AND NOT ON THE NOTES. THE NOTES ARE NOT EVIDENCE. IF YOU DID NOT TAKE NOTES, RELY ON YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE AND DO NOT BE UNDULY INFLUENCED BY THE NOTES OF OTHER JURORS. NOTES ARE NOT ENTITLED TO GREATER WEIGHT THAN THE RECOLLECTION OR IMPRESSION OF EACH JUROR ABOUT THE TESTIMONY.

WHEN YOU GO INTO THE JURY ROOM TO DELIBERATE, YOU MAY TAKE WITH YOU A COPY OF THIS CHARGE, MEANING THESE INSTRUCTIONS, THE EXHIBITS THAT I HAVE ADMITTED INTO EVIDENCE, AND YOUR NOTES. YOU MUST SELECT A JURY FOREPERSON TO GUIDE YOU IN YOUR DELIBERATIONS AND TO SPEAK FOR YOU HERE IN THE COURTROOM.

YOUR VERDICT MUST BE UNANIMOUS. AFTER YOU HAVE REACHED A UNANIMOUS VERDICT, YOUR JURY FOREPERSON SHOULD FILL OUT THE ANSWERS TO THE WRITTEN QUESTIONS ON THE VERDICT FORM AND SIGN AND DATE IT. AFTER YOU HAVE CONCLUDED YOUR SERVICE AND I HAVE DISCHARGED THE JURY, YOU ARE NOT REQUIRED TO TALK WITH ANYONE ABOUT THE CASE.

IF YOU NEED TO COMMUNICATE WITH ME DURING YOUR DELIBERATIONS, THE FOREPERSON SHOULD WRITE THE INQUIRY AND GIVE IT TO THE COURT SECURITY OFFICER. AFTER CONSULTING WITH THE ATTORNEYS, I WILL RESPOND EITHER IN WRITING OR BY MEETING WITH YOU IN THE COURTROOM. KEEP IN MIND, HOWEVER, THAT YOU MUST NEVER DISCLOSE TO ANYONE, NOT EVEN TO ME, YOUR NUMERICAL DIVISION ON ANY QUESTION.

ALL RIGHT, LADIES AND GENTLEMEN, THE NEXT SEVERAL PAGES ARE THE VERDICT FORM, AND THE VERDICT FORM CONTAINS A NUMBER OF QUESTIONS THAT YOU ARE -- YOU ARE ASKED TO ANSWER. LET'S GO OVER THOSE. AND I HAVE DIVIDED UP THE VERDICT FORM ACCORDING TO THE VARIOUS

CLAIMS THAT ARE ALLEGED BY THE PLAINTIFF IN ITS COMPLAINT. AND THEN, ALSO, I HAVE QUESTIONS FOR YOU ON THE DEFENDANT'S EQUITABLE DEFENSES AT THE VERY END.

SO, LET'S GO THROUGH THE VERDICT FORM. A, BREACH OF CONTRACT. QUESTION NUMBER 1, ON RETENTION OF DOCUMENTS. YOU HAVE BEEN INSTRUCTED AS A MATTER OF LAW THAT THE DEFENDANT RETAINED CONFIDENTIAL INFORMATION IN BREACH OF THE JUNE 3, 2004, CONFIDENTIALITY AGREEMENT. WHAT AMOUNT OF NOMINAL DAMAGES, IF ANY, DID THE PLAINTIFF PROVE BY A PREPONDERANCE OF THE EVIDENCE IS ATTRIBUTABLE TO THE DEFENDANT'S RETENTION OF THE PLAINTIFF'S CONFIDENTIAL INFORMATION UNDER THE CONFIDENTIALITY AGREEMENT? ANSWER IN DOLLARS AND CENTS, IF ANY.

QUESTION NUMBER 2, USE OF THE PLAINTIFF'S CONFIDENTIAL INFORMATION.

A. DO YOU FIND THAT THE PLAINTIFF PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT FAILED TO COMPLY WITH THE JUNE 3, 2004, CONFIDENTIALITY AGREEMENT?

B. IF YOU ANSWERED YES TO QUESTION 2A, WHAT SUM OF MONEY, IF ANY, PAID NOW IN CASH, WOULD REASONABLY AND FAIRLY COMPENSATE THE PLAINTIFF AS A REASONABLE ROYALTY ARISING FROM THE DEFENDANT'S FAILURE TO COMPLY WITH THE JUNE 3, 2004, CONFIDENTIALITY

AGREEMENT? ANSWER IN DOLLARS AND CENTS, IF ANY.

PART B, MISAPPROPRIATION OF TRADE SECRETS. QUESTION NUMBER 3, DID THE PLAINTIFF PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT MISAPPROPRIATED THE PLAINTIFF'S TRADE SECRETS? ANSWER YES OR NO. IF YOU ANSWERED YES TO QUESTION 3, THEN PROCEED TO ANSWER QUESTION 4. OTHERWISE, PROCEED TO QUESTION 9.

QUESTION 4, WHAT SUM OF MONEY, IF ANY, IF PAID NOW IN CASH, WOULD FAIRLY AND REASONABLY COMPENSATE THE PLAINTIFF FOR THE DEFENDANT'S MISAPPROPRIATION OF THE PLAINTIFF'S TRADE SECRETS? ANSWER IN DOLLARS AND CENTS, IF ANY; DISGORGEMENT, IF ANY; OR REASONABLE ROYALTY, IF ANY.

QUESTION NUMBER 5, DID THE PLAINTIFF PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT'S MISAPPROPRIATION OF THE PLAINTIFF'S TRADE SECRETS RESULTED FROM THE DEFENDANT'S FRAUD, MALICE, OR GROSS NEGLIGENCE? ANSWER YES OR NO. IF YOU ANSWERED YES TO QUESTION NUMBER 5, THEN PROCEED TO QUESTION NUMBER 6. OTHERWISE, PROCEED TO QUESTION NUMBER 9.

QUESTION NUMBER 6, WHAT SUM OF MONEY, IF ANY, IF PAID NOW IN CASH, SHOULD BE ASSESSED AGAINST THE DEFENDANT AND AWARDED TO THE PLAINTIFF AS EXEMPLARY DAMAGES, IF ANY, FOR THE DEFENDANT'S TRADE SECRET

MISAPPROPRIATION?

QUESTION NUMBER 7, DID THE DEFENDANT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF MUST HAVE KNOWN OR MUST HAVE BEEN REASONABLY ABLE TO DISCOVER THAT THE DEFENDANT HAD USED THE PLAINTIFF'S PROPRIETARY INFORMATION TO CREATE A COMPETING PRODUCTS BEFORE NOVEMBER 25, 2005? ANSWER YES OR NO.

QUESTION NUMBER 8, DID THE PLAINTIFF PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT FRAUDULENTLY CONCEALED THE FACTS UPON WHICH THE PLAINTIFF'S MISAPPROPRIATION OF TRADE SECRETS CLAIM IS BASED? ANSWER YES OR NO.

TORTIOUS INTERFERENCE, QUESTION NUMBER 9, DID THE DEFENDANT INTENTIONALLY INTERFERE WITH THE PLAINTIFF'S PROSPECTIVE BUSINESS RELATIONS WITH APPLE? ANSWER YES OR NO. IF YOU ANSWERED YES TO QUESTION 9, THEN PROCEED TO QUESTION 10. OTHERWISE, PROCEED TO QUESTION 13.

QUESTION NUMBER 10. WHAT SUM OF MONEY, IF ANY, PAID NOW IN CASH, WOULD REASONABLY AND FAIRLY COMPENSATE THE PLAINTIFF FOR ITS LOST PROFITS DAMAGES ARISING FROM THE DEFENDANT'S INTENTIONAL INTERFERENCE WITH THE PLAINTIFF'S PROSPECTIVE RELATIONS WITH APPLE? ANSWER IN DOLLARS AND CENTS, IF ANY.

QUESTION 11, DID THE DEFENDANT PROVE BY

CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT'S TORTIOUS INTERFERENCE WAS THE RESULT OF FRAUD, MALICE, OR GROSS NEGLIGENCE? ANSWER YES OR NO.

QUESTION 12, WHAT SUM OF MONEY, IF ANY, IF PAID NOW IN CASH, SHOULD BE ASSESSED AGAINST THE DEFENDANT AND AWARDED TO THE PLAINTIFF AS EXEMPLARY DAMAGES, IF ANY, FOR THE DEFENDANT'S TORTIOUS INTERFERENCE? ANSWER IN DOLLARS AND CENTS, IF ANY.

D. PATENT INFRINGEMENT. QUESTION NUMBER 13, DO YOU FIND THAT THE PLAINTIFF PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT DIRECTLY INFRINGED THE FOLLOWING CLAIMS OF THE '981 PATENT? ANSWER YES OR NO FOR EACH CLAIM.

AND THERE YOU HAVE A CHART THAT LISTS THE SIX CLAIMS THAT ARE ASSERTED HERE AS HAVING BEEN INFRINGED AND THE FOUR PRODUCTS THAT THE PLAINTIFF ASSERTS INFRINGED ONE OR MORE OF THOSE SIX CLAIMS. SO, YOU WILL ANSWER YES OR NO TO -- FOR EACH PRODUCT WITH RESPECT TO EACH OF THE ASSERTED CLAIMS.

QUESTION NUMBER 14, DO YOU FIND THAT THE DEFENDANT HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ANY OF THE FOLLOWING CLAIMS OF THE '981 PATENT ARE INVALID DUE TO OBVIOUSNESS? AND YOU'LL ANSWER YES OR NO FOR EACH OF THE SIX ASSERTED CLAIMS.

QUESTION NUMBER 15, DO YOU FIND THAT THE

DEFENDANT HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ANY OF THE FOLLOWING CLAIMS OF THE '981 PATENT ARE INVALID FOR FAILING TO SATISFY THE WRITTEN DESCRIPTION REQUIREMENT? ANSWER YES OR NO FOR EACH OF THE SIX ASSERTED CLAIMS.

QUESTION NUMBER 16, DO YOU FIND THAT THE DEFENDANT HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ANY OF THE FOLLOWING CLAIMS OF THE '981 PATENT ARE INVALID FOR FAILING TO CONTAIN A SUFFICIENTLY FULL AND CLEAR DESCRIPTION OF HOW TO MAKE AND USE THE FULL SCOPE OF THE CLAIMED INVENTION? ANSWER YES OR NO FOR EACH OF THE SIX ASSERTED CLAIMS. IF YOU ANSWERED YES TO ANY CLAIM IN RESPONSE TO QUESTION NUMBER 13, AND NO TO THE SAME CLAIM IN RESPONSE TO QUESTION NUMBERS 14 AND 15, PROCEED TO QUESTION 17. OTHERWISE, PROCEED TO QUESTION 19.

QUESTION 17, WHAT SUM OF MONEY IF PAID NOW IN CASH WOULD FAIRLY AND ADEQUATELY COMPENSATE THE PLAINTIFF AS A REASONABLE ROYALTY FOR THE DEFENDANT'S INFRINGEMENT OF THE '981 PATENT? ANSWER IN DOLLARS AND CENTS, IF ANY.

QUESTION NUMBER 18, DO YOU FIND THAT THE PLAINTIFF HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT'S INFRINGEMENT, IF ANY, OF THE '981 PATENT WAS WILLFUL? ANSWER YES OR NO.

PART E, DEFENDANT'S EQUITABLE DEFENSES. QUESTION NUMBER 19, DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT PROVED THAT THE DEFENDANT'S CONDUCT WAS EXCUSED BECAUSE OF LACHES?

QUESTION NUMBER 20, DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT PROVED THAT THE PLAINTIFF HAD UNCLEAN HANDS? ANSWER YES OR NO.

ALL RIGHT. MEMBERS OF THE JURY, THOSE ARE THE 20 QUESTIONS THAT ARE PRESENTED TO YOU. YOU WILL ANSWER ALL OR SOME OF THOSE QUESTIONS DEPENDING ON HOW YOU ANSWER THE QUESTIONS IN THE ORDER IN WHICH THEY'RE PRESENTED TO YOU, AND THEN WHOEVER YOU ELECT AS THE FOREPERSON WILL SIGN THE VERDICT FORM AND DATE IT. AND THEN WHEN YOU'VE REACHED A VERDICT, YOU'LL INFORM THE COURT SECURITY OFFICER.

OKAY. BEFORE WE GET THERE, THOUGH, YOU NEED TO HEAR THE FINAL ARGUMENTS OF THE LAWYERS. THEY HAVE AN OPPORTUNITY TO SUM UP THE EVIDENCE FOR YOU. YOU ARE THE JUDGES OF THE EVIDENCE. SO, IF DURING FINAL ARGUMENTS YOU HEAR SOMETHING THAT YOU DON'T BELIEVE IS PART OF THE EVIDENCE, THEN YOU DON'T -- YOU SHOULD RELY ON THE EVIDENCE, NOT ON THE FINAL ARGUMENTS. KEEP IN MIND THAT AS WITH THE OPENING STATEMENTS, FINAL ARGUMENTS BY THE LAWYERS ARE NOT EVIDENCE. THE EVIDENCE CAME FROM THE WITNESS STAND AND FROM THE DOCUMENTS THAT

WERE PRESENTED TO YOU AND ADMITTED INTO EVIDENCE.

OKAY. NOW, I STARTED READING PROBABLY AN HOUR AND 20 MINUTES AGO, ROUGHLY. I'M GUESSING.

DEPUTY COURT CLERK: 10:32.

THE COURT: I STARTED READING ABOUT AN HOUR AND 30 MINUTES AGO. EXACTLY AN HOUR AND 30 MINUTES AGO. SO, I HAVEN'T VISITED WITH THE LAWYERS AS TO WHETHER WE SHOULD TAKE LUNCH AT THIS TIME OR TAKE A BREAK AND THEN LET THE PLAINTIFF MAKE ITS OPENING ARGUMENT. LET'S AT LEAST TAKE A BREAK. LET ME VISIT WITH THE LAWYERS. IT'S NOON, SO LET'S TAKE A 10-MINUTE RECESS AND THEN -- AND THEN WE'LL DECIDE WHETHER TO HAVE LUNCH NOW AND COME BACK AFTER LUNCH FOR ARGUMENTS OR WHETHER TO START THE ARGUMENTS, BREAK FOR LUNCH, AND THEN FINISH THE ARGUMENTS LATER.

SO, WOULD YOU PLEASE GO WITH MR. SERRATO.

COURT SECURITY OFFICER: ALL RISE.

(JURY NOT PRESENT)

THE COURT: ALL RIGHT. YOU MAY BE SEATED. I ALSO WANT TO ASK THE JURY WHAT THEY'D LIKE TO DO. DO COUNSEL HAVE ANY PREFERENCE HERE?

MR. ALIBHAI: WE'D LIKE TO PROCEED AT THIS TIME, YOUR HONOR, PLAINTIFF WOULD, AND AT LEAST GET THROUGH THE FIRST HOUR.

THE COURT: OKAY.

MR. BRAGALONE: PERHAPS IF WE HAD SOME IDEA OF HOW THEY WERE SPLITTING, THE PLAINTIFFS WERE SPLITTING THE ARGUMENT.

THE COURT: HE SAID AN HOUR.

MR. ALIBHAI: 60 TO 65 MINUTES IN THE OPENING.

THE COURT: LEAVING 25 TO 30 MINUTES FOR CLOSING?

MR. ALIBHAI: YES, YOUR HONOR.

THE COURT: OKAY. SO, WE WOULD GO UNTIL A LITTLE AFTER 1:00.

MR. ALIBHAI: YES, YOUR HONOR.

THE COURT: OKAY.

MR. BRAGALONE: SUBJECT TO WHAT THE JURY WANTS TO DO, YOUR HONOR, DEFENDANTS HAVE NO OBJECTION.

THE COURT: OKAY. ALL RIGHT, MR. SERRATO, WOULD YOU ASK THE MEMBERS OF THE JURY IF -- THERE ARE TWO CHOICES. EITHER WE CAN BREAK FOR LUNCH NOW AND COME BACK NOW AND THEY CAN HEAR ALL -- ALL OF THE ARGUMENTS. OR WE CAN GET STARTED WITH THE ARGUMENTS AND HEAR ONE HOUR OF ARGUMENT AND BREAK FOR LUNCH A LITTLE AFTER 1:00.

COURT SECURITY OFFICER: YES, SIR.

THE COURT: TELL ME WHAT THEY WOULD LIKE TO DO.

COURT SECURITY OFFICER: YES, SIR.

MR. ALIBHAI: CAN WE BE EXCUSED FOR A MOMENT, YOUR HONOR?

THE COURT: SURE. I DIDN'T KNOW IF HE WOULD COME RIGHT BACK, BUT SURE, IF YOU NEED TO BE EXCUSED, GO AHEAD.

LET'S SEE. ARE ANY OF THE LAWYERS -- DID BOTH MR. MCCABE AND MR. ALIBHAI LEAVE? I THINK THEY DID. AND MR. WILSON. LET ME WAIT JUST A MOMENT UNTIL THEY COME BACK.

MR. SERRATO, TELL THEM DON'T LEAVE YET.

OKAY.

MR. WILSON: HE JUST WENT DOWN THE HALL.

THE COURT: THAT'S OKAY. HERE'S MR. ALIBHAI.

MR. WILSON: OKAY.

THE COURT: OKAY, COUNSEL FOR BOTH SIDES ARE IN THE COURTROOM. THE COURT SECURITY OFFICER HAS INFORMED ME THAT THE JURY WANTS TO GO TO LUNCH NOW, SO WE'RE GOING TO BREAK FOR LUNCH FOR ONE HOUR. I'M GOING TO BRING THEM BACK IN THE COURTROOM, THOUGH, TO INSTRUCT THEM THAT THEY CANNOT DELIBERATE AT LUNCH. THEY HAVE TO WAIT UNTIL FINAL ARGUMENTS AND THEN WHEN THEY'RE ALL TOGETHER IN THE JURY ROOM.

SO, MR. SERRATO --

COURT SECURITY OFFICER: A FEW OF THEM ARE IN THE RESTROOM, YOUR HONOR.

THE COURT: OH, OKAY. WELL, OKAY. LET'S SEE. WE'RE STILL WAITING FOR MR. MCCABE, SO -- AND HERE'S MR. MCCABE.

OKAY, MR. SERRATO, EVERYBODY'S BACK IN THE COURTROOM, SO WHENEVER THEY'RE READY, BRING THEM IN.

COURT SECURITY OFFICER: ALL RISE.

(JURY PRESENT)

THE COURT: ALL RIGHT. TAKE YOUR SEATS, PLEASE. ALL RIGHT, MEMBERS OF THE JURY, MR. SERRATO, THE COURT SECURITY OFFICER INFORMS ME THAT YOU WOULD LIKE TO GO TO LUNCH NOW. SO WE WILL RECESS FOR ONE HOUR. IT IS ABOUT 8 MINUTES AFTER 12:00 ACCORDING TO MY WATCH, SO CAN WE RECESS UNTIL 1:10 P.M. IS THAT ENOUGH TIME FOR YOU? TELL ME IF IT'S NOT.

JUROR: THAT'S PLENTY.

THE COURT: THAT'S ENOUGH TIME. ALL RIGHT. LET'S RECESS FOR ONE HOUR UNTIL 1:10. I NEED TO TELL YOU THAT YOU CAN -- AS I'VE TOLD YOU BEFORE, YOU CAN GO TO LUNCH TOGETHER IF YOU WANT TO. I DON'T KNOW HOW YOU TAKE LUNCH DURING THIS TRIAL, BUT YOU CANNOT TALK ABOUT THE CASE. YOU CAN ONLY DELIBERATE ON THE CASE WHEN ALL OF YOU ARE TOGETHER, ALL NINE OF YOU ARE TOGETHER, IN THE JURY ROOM AFTER YOU HEAR THE FINAL ARGUMENTS OF THE

LAWYERS. SO, KEEP YOUR THOUGHTS ABOUT THE CASE TO YOURSELF UNTIL THAT TIME.

OKAY, SEE YOU BACK AT 1:10.

COURT SECURITY OFFICER: ALL RISE.

(JURY NOT PRESENT)

THE COURT: ALL RIGHT. WE'LL BE IN RECESS UNTIL 1:10 P.M.

(BREAK TAKEN FROM 12:11 P.M. TO 1:15 P.M.)

(JURY NOT PRESENT)

COURT SECURITY OFFICER: ALL RISE.

THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS. OKAY.

MR. KIMBLE: I'M GUESSING MR. BRAGALONE'S IN THE BATHROOM. HE'LL BE BACK IN A MINUTE.

THE COURT: OKAY. OKAY. FOR THE RECORD, MR. BRAGALONE AND MR. KIMBLE ARE IN THE COURTROOM ALONG WITH MR. ALIBHAI AND MR. MCCABE, MR. WILSON. MR. GRAHAM IS HERE, AND MR. TOKOS AND MR. LANEY, SO -- AND MS. CHEN. SO WE ARE READY TO BEGIN FINAL ARGUMENTS.

MR. WESTBERG, WOULD YOU BRING IN THE JURY, PLEASE.

COURT SECURITY OFFICER: ALL RISE.

(JURY PRESENT)

THE COURT: ALL RIGHT. TAKE YOUR SEATS, PLEASE. OKAY, LADIES AND GENTLEMEN, WE'RE GOING TO

START WITH FINAL ARGUMENTS. PLAINTIFF HAS THE RIGHT TO GO FIRST, AND SO WE WILL BEGIN WITH MR. ALIBHAI.

MR. ALIBHAI?

MR. ALIBHAI: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

THE COURT: YES.

MR. ALIBHAI: LADIES AND GENTLEMEN OF THE JURY, LIE, CHEAT, AND STEAL, THOSE ARE THE CONCEPTS THAT WE'RE TAUGHT AS YOUNG CHILDREN ARE NOT PROPER TYPES OF BEHAVIOR AS HUMAN BEINGS. THOSE ARE THE CONCEPTS THAT WE'RE TAUGHT THAT MORAL PEOPLE DON'T DO. AND WHETHER YOU LEARN IT IN KINDERGARTEN OR SUNDAY SCHOOL OR FROM YOUR PARENTS OR FROM SOMEBODY ELSE, WHAT YOU'VE SEEN OVER THE LAST FEW WEEKS IS THAT IN 2004, INTERSIL HAD THE OPPORTUNITY AND ABILITY TO BUY TAOS, LEGALLY, BUT INSTEAD CHOSE TO EMBARK ON A COURSE OF CONDUCT THAT INVOLVED LYING, CHEATING, AND STEALING.

WHEN MR. MCCABE STOOD UP HERE THREE WEEKS AGO AND SAID TO YOU, THIS IS A VERY SIMPLE CASE, EVERYTHING YOU NEED TO KNOW ABOUT THIS CASE, YOU LEARNED IN KINDERGARTEN. AND WHEN YOU LOOK AT THE CONDUCT THAT INTERSIL HAS ENGAGED IN, THOSE SAME RULES THAT I'M TALKING ABOUT THAT APPLY TO EACH OF US AS WE LIVE OUR DAILY LIVES APPLY IN THE BUSINESS WORLD. WE HEARD THE JUDGE READ THROUGH THE CHARGE AND THE DIFFERENT CAUSES

OF ACTION.

LYING. IF YOU MAKE AN AGREEMENT, YOU HAVE TO STAND BY IT. YOU DON'T BREAK YOUR WORD. THAT'S CALLED BREACH OF CONTRACT.

YOU DON'T CHEAT. YOU DON'T GO TO CUSTOMERS OF SOMEBODY ELSE AND USE STOLEN THINGS TO TRY TO GET THEIR BUSINESS. IT'S CALLED TORTIOUS INTERFERENCE.

AND YOU CERTAINLY DON'T STEAL. YOU DON'T MISAPPROPRIATE TAOS'S TRADE SECRETS. SO, DURING THE COURSE OF THE NEXT HOUR, MR. MCCABE AND I WOULD LIKE TO TALK TO YOU ABOUT THE EVIDENCE THAT YOU'VE HEARD AND SUM IT UP INTO THE IDEAS THAT THE JUDGE TALKED ABOUT WITH THE DIFFERENT CAUSES OF ACTION.

BUT BEFORE I DO THAT, I NEED TO STOP, AND I NEED TO APPRECIATE AND UNDERSTAND THAT THE NINE OF YOU HAVE SAT HERE FOR FOUR WEEKS, DRIVEN ON ICY ROADS, WATCHED IT SNOW, AND TAKEN NOTES AND LISTENED TO THINGS ABOUT DUAL-DIODES AND EXPOSED WELLS AND SHIELDED WELLS AND THE '981 PATENT AND KUIJK AND ALL SORTS OF THINGS, AND YOU'VE DONE IT DILIGENTLY AND YOU'VE DONE IT ATTENTIVELY. AND FOR THAT, TAOS, MR. LANEY, MR. STRIPPOLI, AND DR. DIERSCHKE THANK YOU. BECAUSE IN THE AMERICAN JUDICIAL SYSTEM, IT'S A CONSTITUTIONAL RIGHT TO A JURY, BUT IT TAKES EACH OF YOU UPHOLDING YOUR OATH TO BE JURORS AND SITTING HERE AND TAKING TIME FROM

EVERYTHING ELSE THAT YOU HAD GOING ON OVER FOUR WEEKS. AND SO WE APPRECIATE THAT. NOT ONLY DOES TAOS APPRECIATE THAT, MR. MCCABE AND I, MS. CHEN AND MR. WILSON APPRECIATE THAT BECAUSE TAOS DOESN'T GET JUSTICE WITHOUT YOU DECIDING THE FACTS OF THIS CASE.

WHEN MR. MCCABE STOOD UP HERE THREE WEEKS AGO, HE STARTED TALKING ABOUT WHAT THE EVIDENCE WILL SHOW, AND I THINK WHAT THE EVIDENCE HAS SHOWN ARE THE THINGS THAT HE TOLD YOU THAT THE EVIDENCE WOULD SHOW. AND IF YOU THINK ABOUT ALL THE EVIDENCE YOU'VE HEARD OVER A PERIOD OF FOUR WEEKS AND YOU PUT IT INTO THESE FIVE BUCKETS, IT WILL HELP YOU ANSWER THE QUESTIONS THAT THE JUDGE ASKED THAT YOU HAVE TO ASK -- ANSWER AT THE END OF THIS CASE.

ONE, WHETHER TAOS DEVELOPED TRADE SECRETS AND PATENTED TECHNOLOGY REGARDING AMBIENT LIGHT SENSORS.

TWO, WHETHER INTERSIL LEARNED ABOUT THAT INFORMATION OVER THE COURSE OF THE DUE DILIGENCE AND ILLEGALLY KEPT THAT INFORMATION.

THREE, WHETHER THEY CREATED A COMPETING AMBIENT LIGHT SENSOR PRODUCT LINE THROUGH THE WRONGFUL USE OR NOT PERMITTED USE OF THOSE TRADE SECRETS AND CONFIDENTIAL INFORMATION.

FOUR, WHETHER THEY INFRINGED THE PATENT.

AND FIVE, WHETHER THEY USED THAT TO TAKE

APPLE IPHONE BUSINESS AWAY.

SO LET'S START TALKING ABOUT TAOS AND WHAT IT IS AND WHO IT IS. TAOS, AS YOU SAW -- AND THIS RELATES TO THE MISAPPROPRIATION CLAIM IN WHICH YOU MUST SHOW THAT A TRADE SECRET EXISTS, THAT IT WAS ACQUIRED THROUGH A CONFIDENTIAL RELATIONSHIP, THERE WAS A CONFIDENTIALITY AGREEMENT HERE. THAT'S HOW THEY FOUND OUT OUR TRADE SECRETS. WE GAVE THEM TO THEM UNDER A CONFIDENTIALITY AGREEMENT. THEY USED THOSE TRADE SECRETS FOR THEIR OWN PURPOSES, AND IT CAUSED DAMAGE TO THE PLAINTIFF.

ON THE CONTRACT SIDE, THERE'S A CONTRACT, WHICH IS THE CONFIDENTIALITY AGREEMENT THAT EXISTS. THE PLAINTIFF DID WHAT IT WAS SUPPOSED TO DO UNDER THE CONTRACT AND GAVE THEM INFORMATION AND ENTERED INTO DUE DILIGENCE WITH THEM. AND THAT THE DEFENDANT DID SOMETHING THAT THE CONTRACT PROHIBITED IT FROM DOING. WE'RE GOING TO TALK ABOUT PERMITTED USE A LOT TODAY, WHICH IS A PROVISION OF THE CONTRACT. AND THAT THE PLAINTIFF WAS HARMED BY THAT.

SO YOU'VE HEARD ABOUT TAOS, AND YOU'VE HEARD HOW TAOS WAS CREATED IN 1999 BY MR. LANEY AND MR. STRIPPOLI AND DR. DIERSCHKE AND A NUMBER OF INDIVIDUALS, AND THESE PEOPLE, IF YOU THINK ABOUT THEIR EXPERIENCE, WHEN YOU LISTEN TO MR. LANEY AND

MR. STRIPPOLI AND DR. DIERSCHKE, JUST THREE OF THE PEOPLE WHO WERE FOUNDERS, THEY HAVE OVER A HUNDRED YEARS OF EXPERIENCE WITH OPTOELECTRONIC DEVICES. THEY'VE DEVOTED THEIR LIVES TO SEMICONDUCTOR CHIPS THAT SENSE LIGHT.

AND THESE PEOPLE FOUNDED THIS COMPANY AFTER THEY LEFT T.I. AND GOT A PATENT ON AN IDEA THAT THEY CAME UP WITH FOR AN AMBIENT LIGHT SENSOR, AND THAT WAS IN JANUARY OF 2002. THEY WORKED ON A PRODUCT, AND THEY RELEASED THE 2550 IN AUGUST OF 2002, AND THEN YOU SEE THAT IT TAKES A LONG TIME FOR THEM TO MAKE IMPROVEMENTS TO IT, MAKE IT BETTER, AND CREATE THE NEXT VERSION OF THAT, WHICH WAS THE 2560, WHICH WASN'T RELEASED UNTIL 2005, AFTER THE DUE DILIGENCE WITH INTERSIL.

SO, THE '981 PATENT, WE CERTAINLY HEARD A LOT ABOUT THAT. THE FIRST DUAL-DIODE AMBIENT LIGHT SENSOR WAS THE 2550. THE SECOND ONE WAS THE 2560, WHICH APPROXIMATES A HUMAN EYE RESPONSE TO CHANGE THE WAY THAT THE PHONE REACTS IN THE DISPLAY OR THE TABLET OR A MONITOR OR COMPUTER.

AND HOW DID INTERSIL AND TAOS MEET? YOU HEARD MR. MAHESWARAN SAY, WELL, WE READ ABOUT THEM IN SOME BOOK. THAT'S NOT HOW THEY MET. THE FIRST TIME THEY MET WAS FEBRUARY OF 2004. INTERSIL CAME TO TAOS AND SAID, WE WANT TO PAY YOU A ROYALTY PAYMENT. WE WANT

TO PAY YOU TO USE YOUR TECHNOLOGY. YOU HEARD MR. TOKOS TESTIFY. WE THOUGHT THAT WE WERE DOING SOMETHING. WE WOULD HAVE ASKED THEM FOR A LICENSE. THEY DID. FEBRUARY OF 2004, THEY ASKED FOR A LICENSE. MR. LANEY SAYS, I CAN'T DO THAT. THIS COMPANY IS 50 TIMES THE SIZE WE ARE. WE'VE CREATED THIS REVOLUTIONARY PRODUCT. NOBODY HAS IT. WE CAN'T GIVE IT TO SOMEBODY WHO'S MUCH BIGGER THAN US. IT WOULD PUT US OUT OF BUSINESS. AND SO HE SAID, NO.

THEN THEY COME BACK LATER, AND THEY SAY, LET'S HAVE DUE DILIGENCE TALKS. WE'LL JUST BUY YOUR WHOLE COMPANY. AND SO THAT TAKES US TO THE JUNE, 2004, CONFIDENTIALITY AGREEMENT. AND WHAT THE CONFIDENTIALITY AGREEMENT SAYS IS THAT INFORMATION ABOUT TAOS'S PROPERTIES, EMPLOYEES, FINANCES, BUSINESS, AND OPERATIONS, IT LISTS ALL THOSE THINGS OUT. INFORMATION RELATING TO OUR BUSINESS AND OPERATION, THAT'S CONFIDENTIAL INFORMATION.

WHEN YOU HEAR, THROUGHOUT THE COURSE OF THE DAY TODAY, WHETHER SOMETHING WAS CONFIDENTIAL OR NOT CONFIDENTIAL, THIS DOCUMENT TELLS YOU WHETHER IT'S CONFIDENTIAL OR NOT, THAT DEFINITION, PROPERTIES, EMPLOYEES, FINANCES, BUSINESSES, AND OPERATIONS. YOU WILL HEAR, OVER THE COURSE OF THE NEXT HOUR, THE TYPES OF INFORMATION, AND YOU'VE CERTAINLY HEARD OVER THE

PERIOD OF WEEKS, OF INFORMATION THAT TAOS GAVE TO INTERSIL THAT WAS CONFIDENTIAL.

AND THERE WAS ONE AND ONLY ONE THING THAT INTERSIL COULD DO WITH THAT INFORMATION. IT'S CALLED A PERMITTED USE, AND IT'S TO -- SOLELY FOR THE LIMITED PURPOSE OF ENABLING INTERSIL TO INVESTIGATE AND EVALUATE THE BUSINESS AND FINANCIAL CONDITION OF THE OTHER IN CONNECTION WITH SUCH DISCUSSIONS AND NEGOTIATIONS.

THEY'RE TRYING TO BUY US. THEY WANT TO KNOW WHAT WE DO, HOW WE DO IT, AND WHETHER WE MAKE MONEY DOING IT. IF WE DON'T GIVE THEM THAT INFORMATION, THEY CAN'T MAKE THE DECISION AS TO WHETHER TO BUY US AND HOW MUCH TO PAY FOR US. AND IF SOMEBODY STANDS UP HERE AND SAYS THAT MR. LANEY GAVE US TOO MUCH INFORMATION, WELL, ONE, THEY ASKED FOR IT, NUMBER TWO, WAS THERE SOMETHING WRONG WITH MR. LANEY RELYING ON THIS AGREEMENT? THEY SAID THEY'D USE THE INFORMATION FOR ONE PURPOSE. IS IT HIS FAULT THAT THEY DIDN'T DO THAT?

AND FINALLY, THEY'RE NOT ALLOWED TO RETAIN CONFIDENTIAL INFORMATION. AS YOU HEARD WHEN THE JUDGE READ THE JURY INSTRUCTIONS, THE COURT HAS ALREADY FOUND THAT AS A MATTER OF LAW, INTERSIL BREACHED THE CONFIDENTIAL INFORMATION BY RETAINING DOCUMENTS. NOW, WHEN WE TALK ABOUT PERMITTED USE AND RETENTION AND CONFIDENTIALITY, SOME OF YOU MAY REMEMBER THAT I SPOKE

TO YOU WHEN YOU WERE PANEL MEMBERS AND SITTING BACK HERE, AND I TALKED ABOUT AN EXAMPLE. AND THE EXAMPLE THAT I THINK OF WHEN I THINK ABOUT PERMITTED USE IS CHICK-FIL-A BECAUSE WE HAD CHICK-FIL-A FOR LUNCH TODAY. SO, CHICK-FIL-A DOESN'T SELL HAMBURGERS, DOESN'T HAVE ANY, JUST DOESN'T HAVE THEM. AND THEY SAY, WELL, WE WANT TO START MAKING BURGERS. GREAT. IT'S A MIRACLE. YOU WANT TO MAKE SOMETHING? GO OUT THERE AND MAKE IT.

BUT THEY GO TO MCDONALD'S AND SAY, HEY, WHAT KIND OF BURGERS DO YOU HAVE? AND WHAT TYPE OF THINGS DO YOU USE? AND WHAT'S THE SECRET SAUCE? AND MCDONALD'S TELLS THEM BECAUSE THEY SAY, WE'RE GOING TO BUY MCDONALD'S. THEN THEY DECIDE, NOPE, WE'RE NOT GOING TO BUY MCDONALD'S. WE'RE JUST GOING TO MAKE THE BURGERS THAT MCDONALD'S MAKES AND WE'RE GOING USE THE SECRET SAUCE. THAT'S NOT A PERMITTED USE. THE PERMITTED USE DOESN'T LET YOU BUILD YOUR OWN PRODUCTS USING OUR INFORMATION. THE PERMITTED USE DOESN'T LET YOU USE CONFIDENTIAL INFORMATION FOR YOUR OWN BENEFIT. IT'S TO MAKE AN OFFER. AND YOU HAVE TO DECIDE WHETHER THEY MADE AN OFFER.

SO THIS STARTS OFF WITH A MEETING THAT OCCURS IN CALIFORNIA ON JUNE 8TH OF 2004. IT'S THE FIRST MEETING BETWEEN THE TWO COMPANIES. AND THIS IS PLAINTIFF'S EXHIBIT 52. TAOS MAKES A LONG CORPORATE

PRESENTATION ABOUT ITS COMPANY, ABOUT ITS FINANCES, ABOUT ITS PRODUCTS. ONE OF THE THINGS IT SPECIFICALLY TALKED ABOUT WAS THE 2560. THAT'S WHAT THE LITTLE PRODUCT LOOKS LIKE. I DON'T THINK YOU EVER SAW ONE, BUT THAT'S HOW TINY THEY ARE. THEY FIT ON A PENNY. THAT'S A LITTLE AMBIENT LIGHT SENSOR.

FIRST MEETING, JUNE 8, 2004, TAOS TELLS INTERSIL WE'RE WORKING ON OUR SECOND GENERATION, 2560/61 AMBIENT LIGHT SENSOR. AND WHO SITS IN ON THAT MEETING? A NUMBER OF PEOPLE, INCLUDING BRIAN NORTH WHO HAS ENGINEERING EXPERIENCE. IN FACT, THE TESTIMONY YOU HEARD WAS HE WAS THE ONLY PERSON WITH ENGINEERING EXPERIENCE ON THAT DUE DILIGENCE TEAM.

AND WHAT DOES HE SAY AFTER THAT MEETING? AND THIS IS VERY IMPORTANT BECAUSE YOU'RE GOING TO HEAR -- YOU'RE GOING TO HEAR SOME EVIDENCE TODAY OR CONCEPTS TODAY ABOUT WHAT INTERSIL HAD BEFORE THEY MET US AND WHAT THEY DIDN'T HAVE. HERE'S THE PERSON WHO WORKED ON THE ONLY AMBIENT LIGHT SENSOR THAT INTERSIL'S EXPERT CALLED, "HORRIBLE," THAT THEIR DESIGN ENGINEER CALLED, "NOT VERY GOOD." THAT PERSON, ONE DAY AFTER THE MEETING, SAYS, WE HAVE IMPLEMENTED THE FUNCTION IN A DIFFERENT WAY." HE DIDN'T SAY, WE HAVE THE SAME PRODUCT. HE DIDN'T SAY, THAT'S THE WAY WE DO IT. "WE HAVE IMPLEMENTED THE FUNCTION IN A DIFFERENT WAY."

THIS IS ONE OF THE MOST TELLING E-MAILS IN THIS ENTIRE CASE. IT IS PLAINTIFF'S EXHIBIT 65. IT IS A TRUE STATEMENT OF WHAT BRIAN NORTH THOUGHT ON JUNE 9, 2004. WHEN YOU HEAR THE EVIDENCE AND YOU HEAR ME TALK ABOUT OR HEAR ANYONE STAND UP HERE AND TALK ABOUT IT, THINK ABOUT WHAT THE EVIDENCE SAID BACK THEN, NOT WHAT I'M TELLING YOU TODAY, NOT WHAT MR. MCCABE OR MR. BRAGALONE TELLS YOU. WHAT WAS THE EVIDENCE BACK THEN? BECAUSE E-MAILS DON'T LIE.

THE NEXT THING HE SAYS IS, THEIR PORTFOLIO IS EXACTLY THE SAME GROUP OF PRODUCTS THAT I WOULD SUGGEST WE BUILD, NOT THAT WE HAVE, SUGGEST WE BUILD. THEY DIDN'T HAVE THEM. AND THEY THOUGHT OURS WAS PRETTY CUTE.

WHAT HAPPENS THEN, WHEN MR. NORTH COMES HERE TO TESTIFY? WE ASKED HIM ABOUT THIS MEETING, AND HE SAYS, WELL, I DON'T REMEMBER IF I WENT TO THIS MEETING. I THINK I LOOKED IT UP ON DATA SHEETS AND ONLINE. FINE. WHY DID HE PRETEND NOT TO KNOW ABOUT THE MEETING? WHY DID HE PRETEND, AFTER HE WAS ASKED FOR HIS COMMENTS FROM THE MEETING AND HE WROTE AN E-MAIL SAYING, HERE'S THE THINGS THAT I LEARNED ABOUT THE MEETING, THAT HE WOULD COME HERE AND SAY, OH, DATA SHEET SAID, AND ONLINE? BECAUSE YOU'RE GOING TO HEAR A LOT OF ARGUMENT BY INTERSIL ABOUT, OH, THE INFORMATION WAS PUBLIC, IT'S

NOT CONFIDENTIAL, DON'T WORRY ABOUT IT. NONE OF THIS IS CONFIDENTIAL.

SO, THEY HAD A WITNESS SAY, I LOOKED IT UP ONLINE. WELL, THAT'S NOT WHAT HE TESTIFIED TO. WHEN I DEPOSED HIM, I SAID, DO YOU REMEMBER WHERE YOU LEARNED ABOUT TAOS'S IP? AND HE SAID, I THOUGHT IT WAS DURING A VISIT TO TEXAS. AND THEN HE SAID, "BUT I MUST HAVE LEARNED ABOUT IT BEFORE." "DO YOU REMEMBER HOW YOU LEARNED OF IT?" IT'S CERTAINLY FROM DISCLOSING IT TO US." SO, MR. NORTH ADMITTED THAT HE WAS GIVEN INFORMATION FROM TAOS ABOUT THEIR IP AND THEIR PRODUCTS, AND HE MADE DECISIONS ABOUT, THAT'S THE TYPE OF THINGS THAT WE SHOULD DEVELOP, AND THAT'S THE THINGS THAT WE DON'T DO IN THE SAME WAY. THIS LINE NUMBER 1 OF MR. NORTH'S TESTIMONY ABOUT WHERE HE GOT THIS INFORMATION FROM.

INTERSIL THOUGHT THAT TAOS'S IP WAS VERY COOL. THIS IS ANOTHER PERSON WHO SAT IN AT THAT MEETING. THE NEXT PERSON SAID, REALLY COOL, PRETTY CLEVER. NOTICE HOW NONE OF THE PEOPLE SITTING IN ON THE MEETING ARE SAYING, WE DO THIS, WE DO IT THE SAME WAY, OR WE HAVE AN ENTIRE LINE OF PRODUCTS JUST LIKE THAT. THEY THINK OUR STUFF'S PRETTY COOL AND IT'S CLEVER.

AND SO WHAT HAPPENS IS THAT INTERSIL REALIZES THAT THERE'S AN ISSUE ABOUT HOW LONG YOU CAN

GET TO MARKET, AND TAOS HAS A HEAD START. TAOS ALREADY HAS PRODUCTS. AS MR. MAHESWARAN TESTIFIED, "THEY WERE FURTHER AHEAD THAN US FOR SURE." AND DID THEY TELL TAOS ANY OF THIS? MR. LANEY TESTIFIED THAT HE DID NOT CONSIDER INTERSIL TO BE A COMPETITOR AND THAT IF HE HAD KNOWN THEY WERE COMPETITORS, HE WOULDN'T HAVE SPOKEN WITH THEM. HE WOULDN'T HAVE GIVEN THEM THIS INFORMATION.

"DID ANYBODY SPEAK UP AND SAY THAT THEY WERE WORKING TO DEVELOP AT INTERSIL A DIGITAL AMBIENT LIGHT SENSOR?" "NO." WELL, THERE WAS ONLY ONE PERSON THAT HAD DESIGNED A LIGHT SENSOR BEFORE THAT, MR. NORTH, THE HORRIBLE ONE. DID HE SAY THAT HE TOLD HIM? "I DON'T REMEMBER IF WE DISCLOSED THAT OR NOT." LIE NUMBER TWO. KEEP FROM TAOS INFORMATION ABOUT HOW YOU'RE GOING TO BE A COMPETITOR AND YOU'RE GOING TO TRY TO DO SOMETHING JUST LIKE TAOS IS DOING AND SHOWING YOU.

AND WHAT'S THE PROBLEM WITH THIS? THE ONE GUY WHO'S DESIGNING IS THE SAME GUY WHO'S DOING THE DUE DILIGENCE. YOU HEARD MR. MCALEXANDER TESTIFY THAT IT IS EASIER TO MISAPPROPRIATE TRADE SECRETS IF THE SAME PERSON IS DOING THE SAME FUNCTION. HOW DO YOU DO THAT? IT'S CALLED A CLEAN ROOM. YOU HAVE ONE PERSON WHO'S ON THE DESIGN TEAM AND A SEPARATE TEAM THAT DOES THE DUE DILIGENCE. THAT WAY, THERE'S NO QUESTION THAT THOSE

PEOPLE WHO ARE DOING THE DESIGN DIDN'T LEARN TAOS'S INFORMATION. HERE, THE ONE PERSON WORKING ON THE DESIGN OF THE PHOTODETECTOR LAYOUT KNEW TAOS'S INFORMATION.

TWO OTHER INDIVIDUALS CONTINUE TO DO TAOS'S DUE DILIGENCE, RAJEEVA LAHRI, THE CHIEF TECHNOLOGY OFFICER, AND BRIAN NORTH, THE DESIGN DIRECTOR. THEY HAVE A CALL WITH CECIL ASWELL. HE'S ONE OF THE INVENTORS OF THE '981 PATENT, AND HE'S ALSO ONE OF THE ENGINEERS AT TAOS, AND HE'S GIVING THEM TECHNICAL INFORMATION ABOUT PHOTODIODES, SPEED, STRUCTURES, EFFICIENCY, ABSORPTION DEPTH, CARRIER LIFETIMES. THIS IS TECHNICAL INFORMATION. THIS IS AN HOUR AND 15 MINUTE CALL ABOUT HOW OUR PRODUCTS WORK. WHAT DOES BRIAN NORTH SAY ABOUT THIS? I DON'T REMEMBER THIS CALL. HE'S LISTED THERE.

THEN THEY COME TO TEXAS. AND THEY HAVE AN IN-DEPTH, FULL-DAY MEETING. THEY LEARN ABOUT OUR TECHNICAL TRADE SECRETS, THEY LEARN ABOUT OUR PATENTS, AND THEY LEARN ABOUT OUR FINANCIAL INFORMATION. AND I'LL TALK ABOUT A COUPLE OF THOSE THAT WE'VE ALREADY TALKED ABOUT OVER THE COURSE OF THE WEEKS.

MR. STRIPPOLI TESTIFIED THAT THEY TOLD HIM ABOUT THE 2561 CHIPSCALE PACKAGE, A NEW PRODUCT THAT HAD NOT BEEN RELEASED YET, AND THEN THE MONSTER SPREADSHEET. YOU'RE GOING TO HEAR ABOUT WHETHER TAOS DISCLOSED

CONFIDENTIAL FINANCIAL INFORMATION. THIS EXHIBIT, PLAINTIFF'S EXHIBIT 94 -- IS THAT SITTING THERE? IT'S 300 PAGES. IF YOU HAVE ANY QUESTION ABOUT WHETHER TAOS DISCLOSED CONFIDENTIAL FINANCIAL INFORMATION, PLAINTIFF'S EXHIBIT 94 IS THE EXHIBIT THAT HAS THAT INFORMATION. NOT ONLY DID IT SHOW INFORMATION IN THAT SPREADSHEET TO INTERSIL, INTERSIL REQUESTED A COPY OF THE SPREADSHEET AND IT WAS FORWARDED TO THEM AT THEIR REQUEST. THEY WANTED THIS INFORMATION.

AND MR. LANEY TESTIFIED, THIS EFFECTIVELY TELLS ONE IN THE SEMICONDUCTOR INDUSTRY EVERY COMPONENT THAT MAKES UP THE COST OF THE PRODUCT, INCLUDING PACKAGING.

NOW, THIS PRODUCT, THE 2560, IF IT'S SOMETHING THAT'S NOT YET RELEASED, DR. TURNER WHO SHOWED UP HERE AND TESTIFIED, WHO HAD JOINED INTERSIL IN 2012, HAD NO INVOLVEMENT IN THE DUE DILIGENCE, EVEN HE SAYS, IT HAS VALUE IF YOU TELL SOMEBODY ABOUT THE PRODUCT THAT HASN'T YET COME OUT.

SO, DURING THAT MEETING, TAOS DISCLOSED DETAILS OF THE SECOND GENERATION AMBIENT LIGHT SENSOR. YOU'VE SEEN THIS PICTURE BEFORE, THE STRUCTURE AND THE DISCUSSION THAT OCCURRED AT THAT MEETING. MR. LANEY TESTIFIED ABOUT THAT MEETING. DR. DIERSCHKE TESTIFIED ABOUT THAT MEETING, AND DR. DIERSCHKE TESTIFIED

SPECIFICALLY THAT DURING THAT MEETING, WHEN HE LOOKED AT THIS SLIDE, THERE WAS DISCUSSION ABOUT THAT PRODUCT AND THAT THERE WERE -- AND THAT PRODUCT HAD NOT YET BEEN RELEASED AND THAT THERE WERE A NUMBER OF QUESTIONS AND INCLUDING ABOUT THE PHOTODIODE ITSELF.

AND THEN WHEN YOU WERE SITTING HERE IN TRIAL, DR. DIERSCHKE DREW ON THIS WHITEBOARD, A DIAGRAM OF WHAT THE 2550 PHOTODETECTOR LOOKED LIKE, AND HE ALSO DREW WHAT THE 2560 LOOKED LIKE AND HE TESTIFIED THAT HE SAW CECIL ASWELL DRAW A SIMILAR PICTURE OF THE 2560 DURING THE MEETING. MR. LANEY TESTIFIED THAT THERE WAS INFORMATION GIVEN BY MR. ASWELL ABOUT THE 2560 AND THE PHOTODIODE STRUCTURE.

NOW, MR. MAHESWARAN, WHO NOW WORKS AT SEMTECH, SAID TO YOU THAT HE COULDN'T TELL YOU ABOUT CONFIDENTIAL PRODUCTS OF HIS NEW COMPANY BECAUSE THE PRODUCTS YOU'RE GOING TO OFFER IN THE FUTURE ARE CONFIDENTIAL TO A COMPANY.

AND EVEN DR. TURNER SAID, THINGS THAT ARE GOING INTO THE DESIGN OF A PRODUCT, THINGS OF A TECHNICAL NATURE ARE TRADE SECRET, SO, FINANCIAL INFORMATION, TECHNICAL INFORMATION, THINGS ABOUT A PRODUCT NOT YET RELEASED.

SO THEN AFTER THE JUNE 17TH MEETING, BROADVIEW, THE TOP E-MAIL, ASKED MR. LANEY TO FORWARD

THE INFORMATION FROM THOSE MEETINGS. NOW, IF IT'S ALL PUBLIC AND IT DOESN'T REALLY MATTER, WHY WOULD YOU WANT A COPY? SO, HE SAYS, I WANT YOU TO FORWARD IT. AND SO, MR. LANEY FORWARDS THAT INFORMATION PER THEIR REQUEST, AND DUNCAN WEAVER SENDS IT AROUND TO THAT ENTIRE TEAM, INCLUDING MR. LAHRI AND MR. TOKOS. HE SAYS, "ATTACHED ARE THE SLIDES FROM LAST WEEK'S MEETING WITH TITAN. PLEASE KEEP IN MIND THAT THIS MATERIAL HAS BEEN PROVIDED PURSUANT TO A NONDISCLOSURE AGREEMENT BETWEEN INTERSIL AND TITAN." HE TOLD EVERYBODY IN JUNE OF 2004, INCLUDING MR. LAHRI AND MR. TOKOS, THAT THIS INFORMATION WAS PRODUCED PURSUANT TO CONFIDENTIALITY AGREEMENT BETWEEN INTERSIL AND TAOS.

LIE NUMBER 3 COMING UP. "SO YOU WEREN'T AWARE OF AN NDA BETWEEN INTERSIL AND TAOS?" "I WAS NOT AWARE OF IT." MR. LAHRI.

MR. TOKOS: "MR. BALOG AND I WERE NOT AWARE AT THE TIME OF THE DOCUMENT THAT YOU HAVE SHOWN, THE NDA." HE'S COPIED ON AN E-MAIL THAT SAYS THERE'S AN NDA BETWEEN THE COMPANIES IN JUNE OF 2004. THEN HE TESTIFIES UNDER OATH THAT HE DIDN'T KNOW ABOUT IT. AND WHEN MR. MAHESWARAN WAS ASKED ABOUT IT, HE SAID IT WOULD SURPRISE HIM THAT MR. LAHRI AND MR. TOKOS WOULD TESTIFY UNDER OATH THAT THEY DID NOT KNOW. AND SO AFTER ALL THAT DUE DILIGENCE, INTERSIL MAKES A PROPOSED OFFER OF

$30 MILLION, AND IT LOOKS LIKE THIS.

SO WHEN YOU GET A CHANCE, LOOK AT PLAINTIFF'S EXHIBIT 103, AND LOOK AT, IF YOU CAN SELL YOUR COMPANY FOR $30 MILLION ON A DOCUMENT THAT SAYS, ON INTERSIL LETTERHEAD THAT'S NOT AN INTERSIL LETTERHEAD, AND LOOK AT WHETHER A DOCUMENT THAT'S NOT EVEN SIGNED LOOKS LIKE AN OFFER TO YOU. MR. MCCABE'S GOING TO TALK ABOUT WHAT HAPPENED AFTER THIS OFFER AND COUNTEROFFER.

MR. MCCABE: GOOD AFTERNOON. LIKE MR. ALIBHAI, I WANT TO THANK YOU FOR BEING HERE, ACTING AS JURORS IN THIS CASE, BECAUSE IT IS IMPORTANT TO TAOS.

WHAT HAPPENED AFTER THIS OFFER WAS MADE? THERE WAS A SLIDE IN MR. BRAGALONE'S PRESENTATION THAT STRUCK US. IT'S THIS TOOLBOX SLIDE. WHAT DO YOU HAVE IN YOUR TOOLBOX? I THINK MR. BRAGALONE TOLD YOU THAT HE OFTEN IS TEMPTED TO BUY TOOLS, LOTS OF TOOLS, AND SOMETIMES HE DOESN'T, OFTEN HE DOESN'T, BECAUSE HE ALREADY HAS THEM. I THINK, ACTUALLY, HIS TESTIMONY WAS, SOMETIMES HIS WIFE STOPS HIM FROM BUYING AND SAYS, YOU ALREADY HAVE THIS.

SO ONE OF THE QUESTIONS THAT COMES UP IN THIS CASE HAS TO DO WITH THE VALUE THAT INTERSIL PLACED ON TAOS. THE EVIDENCE SHOWS THAT THE VALUE THAT INTERSIL PLACED ON TAOS WAS 35 TO $45 MILLION. THAT WAS BY THEIR BOARD OF DIRECTORS. THEY SAID, THIS DEAL WOULD

BE WORTH 35 TO $45 MILLION. SO, WOULD INTERSIL'S BOARD -- WOULD THEY PAY 35 TO $45 MILLION FOR SOMETHING THAT THEY ALREADY HAD?

I KNOW ONE PERSON THAT WOULDN'T. THAT'S MY SON. HE'S IN THIRD GRADE. HE TRADES FOOTBALL CARDS. WE USED TO DO BASEBALL CARDS. HE DOES FOOTBALL CARDS. THE OTHER DAY I WAS PICKING UP THE KITCHEN AND I HEARD HIM TALKING TO HIS FRIEND, AND HE SAID, HEY, I'LL GIVE YOU PEYTON MANNING IF YOU GIVE ME THREE OF THESE GUYS. MY SON SAID, NO, I'VE ALREADY GOT PEYTON MANNING. YOU DON'T PAY FOR SOMETHING YOU ALREADY HAVE. THEY DID NOT HAVE AMBIENT LIGHT SENSORS, AND WE KNOW THEY DIDN'T BECAUSE MR. MAHESWARAN TOLD US THAT. MR. ALIBHAI ASKED HIM ON CROSS-EXAMINATION.

THE PRODUCTS, WOULD YOU PAY FOR PRODUCTS THAT YOU ALREADY HAVE? YOU WOULDN'T. MR. MAHESWARAN SAID, THAT'S CORRECT, I WOULDN'T. IF THEY'RE NOT GOING TO PAY FOR PRODUCTS THEY ALREADY HAVE, THEY DIDN'T HAVE AMBIENT LIGHT SENSORS.

THEIR ENTIRE DEFENSE COMES DOWN TO THEIR CLAIM THAT THEY HAD THIS PRODUCT IN DEVELOPMENT, THIS TECHNOLOGY IN DEVELOPMENT BEFORE THEY MET WITH US. WHY WOULD THEY OFFER 35 TO $45 MILLION TO BUY OUR COMPANY IF THEY HAD IT? A THIRD GRADER KNOWS THAT MAKES NO SENSE.

SO, WHAT DID THEY DO? THEY GOT THE

INFORMATION, AND THEY CONDUCTED A BUILD VERSUS BUY ANALYSIS. IT'S ALL OVER THE DOCUMENTS. IT'S ALL OVER THE TESTIMONY. I'M GOING TO SHOW YOU A COUPLE. THIS IS A JEFFRIES DOCUMENT. IT'S PLAINTIFF'S 116. YOU'RE GOING TO SEE IT IN THE EXHIBITS BACK THERE IF YOU CARE TO LOOK AT IT.

RIGHT THERE, IT SAYS, HERE'S WHAT HAPPENED, MR. LANEY'S COUNTERPROPOSAL CAUSED INTERSIL TO RETHINK ITS POSITION. THEY LOOK AT IT, IT'S CUTE, IT'S COOL, IT'S SO INTERESTING, WE COULD DO THIS, IT COULD AFFECT SO MANY BACKLIGHT DISPLAYS. THEY CONDUCT IN JEFFRIES REPORTS A BUILD VERSUS BUY ANALYSIS RELATED TO THE PRODUCTS. MOHAN MAHESWARAN, RAJEEVA LAHRI, THE CTO, WERE SPEARHEADING IT, AND THEY WERE WORKING TO BETTER UNDERSTAND THE DESIGN AND PACKAGING/THE SECRET SAUCE. THAT'S WHAT THEY WERE USING TO CONDUCT THE BUILD VERSUS BUY ANALYSIS.

DUNCAN WEAVER WROTE IN HIS OWN E-MAIL, "WE'RE SUGGESTING INPUT FROM OUR CTO CONCERNING AN INTERNALLY GROWN OPTO PROGRAM." AND HERE IT IS. RAJEEVA LAHRI, JULY 4TH, 7:40 P.M. I DON'T REMEMBER THAT DATE, I DON'T REMEMBER THAT TIME, BUT I KNOW WHAT I WAS DOING ON JULY 4TH AT 7:40 P.M., AND IT WAS NOT WRITING E-MAILS ABOUT WHAT ANOTHER COMPANY'S SECRET SAUCE WAS. BUT THAT'S WHAT MR. LAHRI WAS DOING.

AND HE ASKS, YOU'VE SEEN THIS, THIS IS THE MONSTER SPREADSHEET, AND YOU'VE HEARD INTERSIL'S LAWYERS REPEATEDLY ATTACK MR. LANEY ON THE BASIS THAT HE DID NOT PROVIDE ANY PACKAGING COST INFORMATION TO INTERSIL DURING THE DUE DILIGENCE. HERE IS THE JULY 6TH E-MAIL. DENNIS FOSTER WRITES, HERE IS AN EXAMPLE OF SOME GENERAL PACKAGING COST RANGES, AND HE PROVIDES THIS INFORMATION HERE. AND THERE'S BEEN TESTIMONY AND MR. LANEY HAD TO SUFFER THROUGH CROSS-EXAMINATION ABOUT, THAT DOESN'T SHOW THIS, AND THAT DOESN'T SHOW THIS.

MAY I APPROACH, YOUR HONOR, THE BOARD?

THE COURT: YES.

MR. MCCABE: YOU CAN SEE IT. IT'S A MATCH. AOSOIC, SOIC. ASSEMBLY AND TEST 105. ASSEMBLE AND TEST COST, 105. YIELD, 12 TO 21. 12, 11, YOU CAN LOOK AT THIS IN THE DOCUMENT. IT GOES UP AND DOWN. OTHER MATERIAL YIELD COSTS, 5 CENTS. 5 CENTS, IT'S RIGHT THERE. IT'S A MATCH. THEY TOOK INFORMATION FROM THIS DOCUMENT, THE MONSTER SPREADSHEET, PLAINTIFF'S EXHIBIT 98, 106. YOU CAN SEE IT RIGHT THERE. THEY DID IT. YOU CAN SEE IN THE DOCUMENTS.

AND WE KNOW THEY DID IT BECAUSE MR. MAHESWARAN ADMITTED IT, RIGHT HERE IN CROSS-EXAMINATION. HE SAID, INTERSIL DID A -- HE WAS ASKED ABOUT CONFIDENTIAL INFORMATION. HE WAS

SPECIFICALLY ASKED ABOUT CONFIDENTIAL INFORMATION PROVIDED UNDER THE NDA, AND HE SAID, WE DID A MAKE VERSUS BUY ANALYSIS USING THAT INFORMATION; ISN'T THAT CORRECT? THAT'S CORRECT. UH-HUH. THAT'S NOT PERMITTED. THE PERMITTED USE IS THEY COULD LOOK AT TAOS'S INFORMATION TO DETERMINE WHETHER THEY WANTED TO BUY TAOS, NOT WHETHER THEY WANTED TO MAKE THEIR OWN PRODUCTS. BUT THAT'S WHAT THEY DID WITH IT.

SO, THE TIME LINE. WE'VE HEARD A LOT OF TALK ABOUT THE TIME LINE IN THIS CASE, HOW LONG IT TAKES TO PUT SOMETHING TOGETHER. THIS IS AN IMPORTANT TIME LINE BECAUSE THIS IS INTERSIL'S AMBIENT LIGHT SENSOR DEVELOPMENT TIME LINE. LET'S TAKE A LOOK, PLEASE, IF WE COULD, AT PLAINTIFF'S EXHIBIT 40, WHICH IS DATED OCTOBER 2, 2003. YOU'VE SEEN THIS FLOOR PLAN SEVERAL TIMES BEFORE. THIS WAS THE FLOOR PLAN OF THE EL7900 IN OCTOBER OF 2003, PLAINTIFF'S EXHIBIT 40.

THANK YOU.

LET'S LOOK AT MR. HOBBS, WHAT THEIR EXPERT WITNESS SAID ABOUT THAT EL7900. IT WAS A HORRIBLE PHOTOSENSOR. IT'S HORRIBLE. ITS INFRARED REJECTION IS HORRIBLE. THEIR EXPERT SAT ON THE WITNESS STAND AND SAID THAT ABOUT THIS PRODUCT, WHICH APPARENTLY IS WHAT THEY CLAIM WAS IN EXISTENCE BEFORE THEY MET WITH US. A HORRIBLE PRODUCT.

MR. LIN, I'M NOT GOING TO GO INTO HIS TESTIMONY, HE SAID IT WAS BAD AT DOING IR REJECTION. PX 61, PLEASE, RIGHT HERE, ON JUNE 2, 2004, THAT'S THE DATE BEFORE DUE DILIGENCE. THIS IS THE DATE BEFORE IT BEGINS, THEY HAD 7903 PRODUCT PROPOSAL.

THANK YOU.

AND MR. NORTH ADMITTED THAT AT THAT TIME, THE DESIGN OF 7903 WAS THE SAME AS THE 7900. THE DAY BEFORE THEY MET WITH US, THEY HAD THE SAME HORRIBLE DESIGN IN PLACE, 24 HOURS BEFORE THE NONDISCLOSURE AGREEMENT WAS DESIGNED. WHAT WAS DISCLOSED DURING THE DUE DILIGENCE WAS, IF WE COULD LOOK AT THE PRODUCT DIAGRAM, PLEASE, YOU'VE SEEN THIS. THIS IS THE INFORMATION THAT WAS DISCLOSED.

THANK YOU.

AND THEN PX 111, PLAINTIFF'S EXHIBIT 111. 8 WEEKS AFTER THE DUE DILIGENCE, THEY HAD A DESIGN REVIEW. BRIAN NORTH WAS RESPONSIBLE FOR THE PHOTODETECTOR LAYOUT AT THIS DESIGN REVIEW, AND YOU'VE SEEN THIS DOCUMENT BEFORE. IT'S 8 WEEKS AFTER THE DUE DILIGENCE. A NEW PHOTODETECTOR LAYOUT DIFFERENT FROM THE 7900 WILL BE USED. IT HAS THE LIGHT CURRENT CELLS INTERLEAVING THE DARK CURRENT CELLS. THE RATIO WILL BE 1.

I THINK MR. NORTH TESTIFIED THAT HE MADE

THIS CHANGE BECAUSE OF HIS WORK IN PDIC'S. HE JOINED IN APRIL OF 2003 AND HE WENT ALL THIS WAY, HAVING IMMERSED HIMSELF IN PDIC'S. HE WAS SWIMMING IN IT OR SOMETHING LIKE THAT, HE TESTIFIED TO, NEVER MADE THE CHANGE BEFORE. HE WAS RESPONSIBLE FOR THE 7900. HE'S DOING ALL THIS. EIGHT WEEKS AFTER THIS DUE DILIGENCE IS WHEN HE FINALLY MAKES THE CHANGE. AND YOU CAN SEE, IF YOU LOOK AT THE DESIGN ON AUGUST 31ST, PLEASE.

THANK YOU.

HE CLAIMS HE RELIED ON THIS PATENT APPLICATION. THIS, IF YOU FOLLOW THIS, IT TEACHES TO DO SOMETHING DIFFERENT THAN WHAT HE DID. THIS IS NOT A 1:1 RATIO OF EXPOSED TO COVERED WELLS. IT'S DIFFERENT. THE LIGHT ONES ARE EXPOSED, THE DARK ONES ARE SHIELDED. IT'S NOT A 1:1 RATIO. DR. HOBBS ADMITTED THAT. ITS HONEYCOMB IS NOT WHAT THIS IS. THIS IS THEIR PRODUCT. THEIRS IS THE CHECKERBOARD. THAT IS NOT THE SAME THING AT ALL. THIS PRODUCT DOES NOT DO IR REJECTION. THEIR EXPERTS ADMITTED TO THAT. IT DOESN'T DO HUMAN EYE RESPONSE. THEY COULD NOT HAVE RELIED UPON IT.

THE PICTURES IN THE PATENT APPLICATION, THE PATENTS THAT RELATE TO IT, THEY LOOK KIND OF LIKE OURS. THAT'S WHY THEY'RE TRYING TO ON THAT. THAT'S IT. IT'S NOT THE SAME TECHNOLOGY, IT'S NOT THE SAME SCIENCE. IT DOESN'T DO THE SAME THING. AND IF YOU DO WHAT THESE

APPLICATIONS TALK ABOUT, THESE PATENTS TALK ABOUT, YOU WILL NOT GET ANYWHERE CLOSE TO THAT.

THANK YOU.

SO, JUST QUICKLY, IF WE COULD GO ON HERE, AND I'M NOT GOING TO GO INTO ALL THESE, OKAY? ONE THAT I DO WANT TO GO INTO, THOUGH, IS 226. THIS IS JANUARY OF 2005. THIS IS 6 MONTHS, NOT EVEN, AFTER DUE DILIGENCE IS OVER. THEY WENT TO INTERSIL AND OFFERED THEM THE 29001 DEVICE, AND THEY CLAIM THAT APPLE WAS REALLY EXCITED ABOUT IT. THIS IS LESS THAN 6 MONTHS AFTER DUE DILIGENCE. THEY'VE GOT, NOW, THIS 29001 DEVICE, PRESENTING IT TO APPLE. THEY MADE THE DESIGN CHANGE IN AUGUST. IT'S NOW JANUARY AND APPLE'S SAYING, WOW, THIS LOOKS REALLY GOOD. YOU GUYS ARE QUICK.

BACK, PLEASE.

ENTER THE LIGHT SENSOR MARKET IN 2005. 29001 IS RELEASED IN DECEMBER. 29003 IS RELEASED IN JANUARY. AND THIS IS SO IMPORTANT. JANUARY 26, 2006, THEY DID A CROSS-SECTIONAL ANALYSIS. I'D LIKE TO SEE IT. THEY ARE GOING TO TRY TO ABSOLVE THEMSELVES OF ALL SINS IN THIS CASE BY SAYING THEY DID A CROSS-SECTIONAL ANALYSIS AT THE END OF JANUARY, 2006. HERE'S THE PROBLEM. THEY ALREADY RELEASED THE 001 AND THE 003. IT IS A RED HERRING, AND THEY ARE GOING TO PUT UP ALL THIS DEPOSITION TESTIMONY OF DR. DIERSCHKE AND MR. ASWELL AND

THEY'RE GOING TO SAY, TAOS DOES IT. YOU CAN'T ABSOLVE YOURSELF OF SINS, THOUGH, BY TRYING TO COME BACK AND SAY, WE DID IT AFTER IT WAS ALREADY DONE.

HERE'S THE 7900 DEVELOPMENT, 2 YEARS AND 3 MONTHS. THE DUE DILIGENCE IS RIGHT HERE. THEY TOOK THEM UNTIL JULY TO RELEASE THIS PRODUCT, AND HERE'S THE ENTIRE DEFENSE OF THEIR CASE. THIS IS MR. TOKOS'S E-MAIL TO KIRK LANEY IN APRIL OF 2006. HE SAYS, "THE IR CANCELLATION TECHNIQUE WAS DEVELOPED BEFORE WE MET WITH YOU. IT WAS BASED ON INTERSIL'S OWN EFFORTS WITHOUT MISAPPROPRIATION OF TAOS'S CONFIDENTIAL INFORMATION." I'M GOING TO GO BACK. HE WROTE THAT. HERE'S WHERE THE DUE DILIGENCE OCCURRED. THAT PRODUCT WASN'T RELEASED UNTIL HERE. THE DESIGN REVIEW DIDN'T OCCUR UNTIL HERE.

THE TIME LINE MAKES NO SENSE. IT'S NOT TRUE. AND WE KNOW IT'S NOT TRUE BECAUSE MR. LANEY CALLED IT A LIE. IN HIS DIRECT TESTIMONY, WHEN HE LOOKED AT THAT, HE SAID, IT'S A LIE. THEY NEVER SHOWED ME ANYTHING THAT COULD CANCEL IR, THEY NEVER TALKED ABOUT IT, THEY NEVER SHOWED ME ANYTHING IN THEIR PORTFOLIO. IT WAS SOME OF THE STRONGEST TESTIMONY THAT CAME OUT OF HIS MOUTH ON THAT WITNESS STAND. MR. TOKOS IS SITTING RIGHT THERE. HE DIDN'T HAVE ANY PROBLEM SAYING THAT.

DESIGN REVIEW? HERE'S THE VISIT TO APPLE,

JANUARY 20, FIVE MONTHS. THEY MADE THE CHANGE ON AUGUST 31ST TO THE 7903 WHICH IS THE 29001. FIVE MONTHS LATER THEY'RE TALKING TO APPLE ABOUT IT. THEY'RE AT APPLE'S HEADQUARTERS IN CUPERTINO, CALIFORNIA, AND APPLE'S SAYING, WOW, THIS IS GOOD. YEAH, IT WAS GOOD. IT WAS OUR PRODUCT. IT WAS REALLY GOOD.

MR. HOBBS ON THIS WITNESS STAND HERE LAST WEEK SAID, WELL, YOU KNOW, THERE'S COPYING AND THEN THERE'S COPYING. I DON'T THINK WE TEACH OUR KIDS THAT. THERE'S COPYING.

THOSE TWO PRODUCTS THAT WERE RELEASED BEFORE THE CROSS-SECTIONAL ANALYSIS, THAT AMOUNT'S RIGHT HERE. THAT'S 88,500,000 UNITS OUT OF A TOTAL OF 172,000 UNITS SOLD. THOSE ARE ALL THE AT-ISSUE PRODUCTS THAT MR. UGONE TALKED ABOUT. THEY'RE ALL THE ONES THAT INCORPORATE THE DUAL-DIODE. THOSE TWO THAT WERE DONE BEFORE THE CROSS-SECTIONAL ANALYSIS COUNT FOR MORE THAN HALF.

SO, MR. UGONE HAS TESTIFIED ABOUT MISAPPROPRIATION OF TRADE SECRETS DAMAGES AND BREACH OF CONTRACT DAMAGES. HE'S TALKED ABOUT THE DISGORGEMENT. YOU HEARD HIM TESTIFY ABOUT THE PROFITS THAT INTERSIL MADE ON THE SALE OF THOSE. IT'S 48.78 MILLION. IF YOU APPLY THE SAME SET OF ROYALTIES THAT HE TESTIFIED TO, IT'S 19.0, SAME AS THE BREACH OF CONTRACT.

SO WHEN YOU GET THE JURY VERDICT TODAY, YOU'RE GOING TO HAVE THESE QUESTIONS ASK, MISAPPROPRIATION OF TRADE SECRETS, YES OR NO, THE ANSWER IS YES. THE AMOUNT, DISGORGEMENT, 48,780,000 OR 17,200,000.

BREACH OF CONTRACT, YES. BUILD VERSUS BUY, MOHAN MAHESWARAN TESTIFIED TO IT. IT'S CLEAR AS DAY THEY DID IT. THE AMOUNT? 10 CENT ROYALTY, 17,200,000. THANK YOU.

MR. ALIBHAI: SO LET'S TALK ABOUT THE NEXT CLAIM, PATENT INFRINGEMENT. BECAUSE IT WASN'T GOOD ENOUGH FOR THEM TO VIOLATE THE PERMITTED USE OF THE CONTRACT, BUILD A COMPETING LINE OF PRODUCTS USING OUR INFORMATION FROM THE MONSTER SPREADSHEET, FROM OUR TECHNICAL INFORMATION, OUR FINANCIAL INFORMATION. IT WASN'T GOOD ENOUGH TO USE OUR TRADE SECRETS AND ALL THAT. THEY DECIDED THAT THEY WANTED TO COPY THE APPROACH OF OUR PATENT.

HIS HONOR INSTRUCTED YOU, A PATENT OWNER HAS THE RIGHT TO STOP OTHERS FROM USING THEIR INVENTION DURING THAT 20-YEAR LIFE, AND IT IS YOUR JOB TO DETERMINE WHETHER IT'S INFRINGEMENT BY COMPARING THE INFRINGING PRODUCTS WITH THE CLAIMS OF THE PATENT. YOU'RE ALL FAMILIAR WITH THE '981 PATENT.

IT'S A VERY SIMPLE DISCUSSION WHEN IT COMES

TO INFRINGEMENT OF THIS PATENT. THE REASON IS BECAUSE MOST OF THE THINGS, THEIR EXPERT AGREES, THEY DO IN THEIR PATENT, IN THEIR PRODUCTS. THEY HAVE A HUMAN EYE RESPONSE ALL FOUR PRODUCTS. THAT'S WHAT THESE AMBIENT LIGHT SENSORS ARE DESIGNED TO DO.

ALL OF THEM HAVE A FIRST WELL EXPOSED TO AN INCIDENT LIGHT. HE TESTIFIED TO THAT AS WELL. MR. MCALEXANDER TESTIFIED TO THAT, DR. BUCKMAN TESTIFIED TO THAT. YOU'LL REMEMBER THAT WE WENT DOWN THIS CHECKLIST THAT I MADE OF ALL THE DIFFERENT ELEMENTS. THEN THE SECOND WELL IS SHIELDED FROM THE INCIDENT LIGHT AS WELL. AND THEY HAVE A MEANS FOR DETERMINING INDICATION OF SPECTRAL CONTENT.

CAN WE ENLARGE ONE OF THOSE?

SO, WE TALKED ABOUT THIS MODE3, AND MR. BENZEL SHOWED UP HERE, AND HE TOLD YOU THAT ALL OF THE PRODUCTS THAT ARE ACCUSED HAVE A MODE3, EVERY SINGLE ONE OF THEM. AND HE EVEN TESTIFIED, THEY'RE BASED ON THE EXACT SAME DIGITAL CORE SO THEY OPERATE EXACTLY THE SAME. AND WHAT DOES MODE3 DO? IT FORMS A SUBTRACTION, MODE1 AND MODE2. AND WHAT DOES THAT GET YOU? THEIR EXPERT: YOU CAN TAKE THE TOTAL POWER OF ALL LIGHT, VISIBLE PLUS INFRARED, SUBTRACT OUT THE POWER FROM INFRARED, AND WHAT YOU HAVE IN THE END IS A MEASURE OF THE POWER IN THE VISIBLE. THAT'S BASICALLY AN

APPROXIMATION TO A PHOTOPIC RESPONSE. AND PHOTOPIC IS SIMILAR TO THE HUMAN EYE RESPONSE, CORRECT? RIGHT.

THE PATENT REQUIRES A MEANS FOR DETERMINING AN INDICATION FOR SPECTRAL CONTENT. WHAT THAT MEANS IS THAT WHEN YOU TAKE ALL THE LIGHT AND YOU CANCEL OUT THE INFRARED, WHICH IS WHAT THEIR PRODUCTS ARE ADVERTISED TO DO, YOU'RE LEFT WITH WHAT THE HUMAN EYE SEES, AND WHAT THE HUMAN EYE SEES IS LIGHT WITHIN 400 TO 700 NANOMETERS. WE HAVE ALL BECOME EXPERTS IN LIGHT NOW. 400 TO 700 NANOMETERS, AN INDICATION OF SPECTRAL CONTENT, PHOTOPIC RESPONSE, THE HUMAN EYE RESPONSE. DOES THE AMBIENT LIGHT SENSOR TELL THE PHONE OR THE COMPUTER OR THE TABLET, HERE'S HOW MUCH LIGHT A HUMAN WOULD SEE? OF COURSE IT DOES. THERE'S NO DOUBT ABOUT THAT.

THEIR OWN DESIGN REVIEW DOCUMENTS SAY WHEN YOU TAKE I LIGHT MINUS I DARK, YOU GET IR REJECTION AND THE HUMAN EYE RESPONSE. THAT'S INTERSIL'S DESIGN REVIEW DOCUMENT.

THEY HAVE ANALOG TO DIGITAL CONVERTER. DR. BUCKMAN DOESN'T DISAGREE WITH THAT. THEY HAVE A MULTIPLEXER THAT'S SHOWN ON THE DATA SHEET, SO WE'LL GET TO PULL THESE DATA SHEETS UP IF YOU WANT TO TAKE A LOOK AT THEM. 13, 15, 16, AND 19 ARE THESE FOUR PRODUCTS.

AND THEN THEY HAVE THE A AND D CONVERTER

THAT INTEGRATES OVER TIME AND DEALS WITH THE FLICKER OF LIGHT, 50 HERTZ, 60 HERTZ FLICKER. IT DEALS WITH THAT.

SO DR. BUCKMAN -- YOUR HONOR, CAN I USE THE SHEET FOR A SECOND?

THE COURT: YES.

MR. ALIBHAI: DR. BUCKMAN SAID, WITH RESPECT TO ALL THESE ELEMENTS, HE AGREED THAT EVERY SINGLE ONE OF THEM WAS MET EXCEPT FOR THE MEANS FOR DETERMINING THE INDICATION OF SPECTRAL CONTENT. BUT THEN HE TESTIFIED UNDER OATH THAT THE PRODUCTS GIVE YOU A PHOTOPIC RESPONSE, WHICH IS A HUMAN EYE RESPONSE, AND TELLS YOU ABOUT THE LIGHT THAT'S BETWEEN 400 TO 700 NANOMETERS. AND WITH RESPECT TO THESE APPARATUS CLAIMS, 16, 17, AND 18 OF THESE CERTAIN ONES, WE TALKED ABOUT 43, 45, AND 46, WHICH WERE SIMILAR, EXCEPT 46 REQUIRED A HUMAN EYE RESPONSE. AND DR. BUCKMAN TESTIFIED THAT'S WHAT IT TRIES TO GIVE YOU IS THAT HUMAN EYE RESPONSE.

SO, ALL OF THE ACCUSED PRODUCTS INFRINGE ALL OF THE ASSERTED CLAIMS, 16, 17, 18, 43, 45, AND 46. AND MR. LANEY TESTIFIED THAT WHEN HE READ THE DATA SHEET, HE SAID, IT FELT LIKE I WAS READING THE TAOS PATENT HERE. THAT'S EXACTLY THE OPERATION OF THE DIODE STRUCTURE THAT WE PATENTED AND BROUGHT TO THE MARKET FOR A COMPETITIVE ADVANTAGE. THESE PEOPLE THAT HAD A HUNDRED YEARS OF EXPERIENCE CAME UP WITH A PATENT.

DR. DIERSCHKE IS ONE OF THE INVENTORS OF THAT PATENT. AND THEY CREATED PRODUCTS BASED UPON THAT PATENT. AND INTERSIL JUST DECIDED, DOESN'T MATTER IF SOMEBODY ELSE CREATED IT, WE WANT TO DO IT, WE'LL DO IT. LIE, CHEAT, AND STEAL.

SO, WHAT DOES MR. LANEY DO? HE TELLS INTERSIL, WAIT A MINUTE, I'M A LITTLE CONCERNED, HE WRITES TO MR. MAHESWARAN. AND MR. MAHESWARAN -- AND MR. MAHESWARAN FORWARDS IT TO MR. TOKOS. MR. TOKOS WRITES BACK AND SAYS, DON'T WORRY, YOUR CONFIDENTIAL INFORMATION WAS DESTROYED. THAT WASN'T TRUE. BUT PUT THAT ASIDE. MR. LANEY WRITES BACK AND SAYS, I'M NOT ASKING ABOUT MY CONFIDENTIAL INFORMATION. YOU ALREADY TOLD ME TWO YEARS AGO THAT WAS DESTROYED. HE DIDN'T KNOW IT HADN'T BEEN. HE SAYS, I'M WORRIED ABOUT HOW YOU CAME UP WITH AN IR CANCELLATION TECHNIQUE THAT MIRRORS OURS. IT APPEARS TO MIRROR OUR TECHNIQUE THAT WE DISCLOSED UNDER A CONFIDENTIALITY AGREEMENT AND HAVE COVERED BY A PATENT. HE TOLD THEM THAT THE 29001 DEVICE AND PRODUCT FAMILY INFRINGES THAT PATENT, THAT '981 PATENT.

AND SO WHAT DOES INTERSIL DO? IT HIRES MR. FOGG THREE WEEKS LATER AND TELLS HIM IT'S HIS HIGHEST PRIORITY TO GO LOOK AT THAT TAOS PATENT AND MAKE SOME ARGUMENTS AS TO WHETHER IT'S INVALID SO IT CAN TRY

TO GET AROUND IT, SO IT CAN KEEP SELLING AND USING PATENTED TECHNOLOGY, AND THEN MR. TOKOS TRIES TO BE COY WITH YOU ABOUT WHETHER HE KNEW IT WAS ABOUT THE '918 PATENT. DO YOU KNOW WHAT PATENT HE'S REFERRING TO? I DON'T SEE A PATENT REFERENCE IN HERE. MR. MCCABE ASKED HIM, FAIR ENOUGH, DO YOU KNOW WHAT PATENT HE'S REFERRING TO? I WOULD ASSUME IT'S THE '981 PATENT.

WE'VE BEEN HERE FOR FOUR WEEKS. HAVE WE TALKED ABOUT ANY OTHER PATENTS OF TAOS'S? THEY HAVE OVER 30, BUT THERE'S ONLY ONE THAT COVERS THIS DUAL-DIODE AMBIENT LIGHT SENSOR, THE '981 PATENT.

AND IT WASN'T JUST MR. TOKOS THAT KNEW ABOUT INTERSIL'S -- ABOUT TAOS'S PATENT. MR. BENZEL WAS LOOKING AT THE PATENT AND LOOKING AT WHAT THEY HAD TO REDESIGN THEIR PRODUCTS BASED UPON THE PATENT. THEY TALKED ABOUT HOW TAOS WAS TELLING PEOPLE THAT THEY INFRINGED THEIR PATENT. WELL, WHAT'S WRONG WITH THAT? IF YOUR NEIGHBOR WALKED ACROSS YOUR YARD EVERY DAY AND DUG IT UP, WOULD YOU TELL YOUR NEIGHBORS, HEY, THE GUY DOWN THE STREET KEEPS WALKING ACROSS MY YARD AND DIGGING IT UP? WHAT'S WRONG WITH THAT ? IT'S YOUR PROPERTY. TAOS WAS ENTITLED TO SAY THAT INTERSIL WAS INFRINGING ON THAT PATENT, AND ANY SUGGESTION TO THE CONTRARY IS JUST THEM TRYING TO COVER THEIR TRACKS.

THEY WENT ALL THE WAY TO THEIR CEO AND

CHIEF OPERATING OFFICER, RICH BEYER AND LOU DINARDO, AND LOOKED AT THE TAOS PATENT BECAUSE THEY WERE CONCERNED ABOUT IT, NOT CONCERNED ENOUGH TO STOP USING THE PATENTED TECHNOLOGY, BUT CONCERNED ENOUGH.

AND YOU HEARD MR. MCCABE TALK ABOUT THIS E-MAIL. MR. TOKOS HAS TESTIFIED UNDER OATH AND HAS SAT HERE AND HAS WRITTEN THIS E-MAIL THAT SAYS, WE DEVELOPED IT BEFORE. WE'VE SHOWN YOU THE DOCUMENTS ABOUT WHAT THEY HAD BEFORE. WE'VE SHOWN YOU THAT THE DAY BEFORE THE CONFIDENTIALITY AGREEMENT WAS SIGNED, THEY SAID THEY WERE GOING TO USE THE SAME DESIGN AS THE 7900. THE GUY THEY PAID FROM NEW YORK TO COME DOWN HERE AND TESTIFY ABOUT TRADE SECRETS SAID IT WAS A HORRIBLE PHOTOSENSOR. THEIR DESIGN ENGINEER SAID IT DID A VERY, VERY BAD JOB OF IR REJECTION. THEY DIDN'T USE THAT TECHNOLOGY. THEY SWITCHED. THEY SWITCHED TO TAOS'S TECHNOLOGY, AND TAOS'S PATENTED TECHNOLOGY, AND FOR THAT, WE'RE SEEKING PATENT DAMAGES.

THE LAW ALLOWS REASONABLE ROYALTY. DR. UGONE TESTIFIED TO 10 CENTS PER UNIT, AND THIS IS THE NUMBER OF UNITS THAT WERE SOLD IN THE UNITED STATES, MULTIPLIED BY 10 CENTS. IT'S $105,000, AND THAT'S THE AMOUNT THAT YOU SHOULD AWARD FOR PATENT INFRINGEMENT DAMAGES.

SO, WHEN YOU GET ASKED THE QUESTION,

QUESTION NUMBER 13, YES OR NO FOR EACH CLAIM, 16, 17, 18, 43, 45, 46, ALL FOUR ACCUSED PRODUCTS, THE ANSWER IS YES. EACH ONE OF THOSE INFRINGES EACH OF THOSE CLAIMS. AND WHAT SUM OF MONEY WOULD BE PAID TO COMPENSATE TAOS? $105,000.

NOW, VALIDITY. YOU DON'T HAVE TO KNOW ANY OF THE LAW ABOUT VALIDITY. YOU DON'T HAVE TO KNOW ABOUT KUIJK AND PDIC'S AND AMBIENT LIGHT SENSORS. THE ONLY THING YOU HAVE TO KNOW IS, WHAT DID THOSE E-MAILS SAY ABOUT OUR TECHNOLOGY ON JUNE 9, 2004? IT WAS CLEVER. IT WAS INNOVATIVE. IT WAS SOMETHING DIFFERENT THAN ANYONE HAD DONE BEFORE. NOW, INTERSIL'S GOING TO COME IN, NOW THAT THEY'VE BEEN CAUGHT LYING AND CHEATING AND STEALING, AND GO, OH, THAT PATENT, IT'S INVALID. LET'S LOOK AT WHAT THEY SAID IN 2004.

NOT ONLY DO YOU NOT PAY FOR PRODUCTS YOU DON'T HAVE, YOU DON'T PAY FOR TECHNOLOGY THAT'S WORTHLESS. $45 MILLION IS WHAT THEY GOT BOARD APPROVAL TO PAY FOR AN INVALID PATENT? NO. COMMON SENSE TELLS YOU THAT PATENT'S NOT INVALID, THAT THEY'RE WILLING TO PAY FOR THAT PATENT AND THE TECHNOLOGY THAT CAME ALONG WITH IT.

THIS PATENT IS PRESUMED VALID, AND FOR THEM TO STAND UP AND SHOW YOU A PDIC PATENT AND SAY THAT ONE TEACHES WHAT THE TAOS PATENT TEACHES, THERE'S THREE EASY

REASONS THAT IT DOESN'T. IT'S NOT EXPOSED TO INCIDENT LIGHT. THE JUDGE GAVE YOU THE DEFINITIONS OF THE DIFFERENT TERMS. TO BE INCIDENT LIGHT, IT HAS TO BE VISIBLE AND NONVISIBLE. THESE ARE ONE WAVELENGTH AT A TIME IN A CD PLAYER OR A DVD PLAYER, 860 NANOMETERS OR 635 NANOMETERS. NOT ANYWHERE IN KUIJK DOES IT SAY THERE'S AMBIENT LIGHT, NOR DOES IT SAY IT HAS VISIBLE AND NONVISIBLE. IT'S ONE OR THE OTHER. SO THE FIRST WELL IS NOT EXPOSED TO INCIDENT LIGHT.

THE SECOND WELL IS NOT SHIELDED FROM INCIDENT LIGHT. FIRST REASON, THERE IS NO INCIDENT LIGHT. WE JUST TALKED ABOUT THAT. IT HAS TO BE BLOCKED FROM VISIBLE AND NONVISIBLE. AND YOU HEARD TESTIMONY AND YOU CAN READ THIS PATENT YOURSELF, IT SAYS THE INCIDENT LIGHT IS PARTLY BLOCKED BY SEVERAL OPAQUE ELEMENTS. THE SHADOW MASK BLOCKING THE INCIDENT LIGHT PARTIALLY CAN BE MADE OF METAL. WHAT DID THE JUDGE TELL YOU ABOUT WHAT IT MEANS? BLOCKS ALL INCIDENT LIGHT. PARTIALLY IS NOT ALL.

PDIC IS NOT AN AMBIENT LIGHT SENSOR. MR. MAHESWARAN SAID, IT'S -- IT SENSES A SPECIFIC WAVELENGTH FROM A LASER. AND THE AMBIENT LIGHT SENSOR IS ALL THE LIGHT IN THE ROOM OR OUTSIDE. AND SO WITH RESPECT TO HUMAN EYE RESPONSE, THERE'S NO HUMAN EYE RESPONSES IN DVD DRIVE, RIGHT? YOU DON'T HAVE TO HAVE A

SINGLE DEGREE IN ENGINEERING TO KNOW THAT INSIDE YOUR DVD PLAYER AT HOME, THERE'S NO AMBIENT LIGHT.

MR. NORTH TESTIFIED TO THE SAME THING. "THERE'S NO AMBIENT LIGHT IN THERE, CORRECT?" "THAT'S CORRECT." KUIJK JUST TELLS YOU WHETHER THERE WAS OR WAS NOT LIGHT, HIGH OR LOW, LIGHT, NO LIGHT. IT DOESN'T SAY HUMAN EYE RESPONSE, AND FOR THAT REASON, IT DOES NOT RENDER THE CLAIMS OBVIOUS.

AND MR. MCALEXANDER EXPLAINED THAT IN SOME DETAIL. IT JUST SAYS THE LIGHT IS THERE OR THE LIGHT IS NOT.

NOW, THEY'RE ALSO GOING TO SAY THAT, WELL, IF YOU READ THE PATENT, YOU CAN'T REALLY FIGURE OUT WHAT IT'S ABOUT. I'D SUGGEST TO YOU THAT AFTER THREE WEEKS OF SITTING HERE, WHEN YOU READ THIS PATENT, PLAINTIFF'S EXHIBIT 1, YOU'LL KNOW EXACTLY WHAT IT'S TALKING ABOUT. IT'S TALKING ABOUT A VERY INTERESTING AND NEW WAY TO SENSE AMBIENT LIGHT THAT NOBODY HAD EVER COME UP WITH IN THE ENTIRE WORLD BEFORE THAT. AND SO WHEN THEY SAY TO YOU, WELL, WE DON'T KNOW THAT IT TEACHES SUBTRACTION, YOU'LL FIND THIS COLUMN THAT SAYS, ARITHMETIC PROCESSING AND YOU'LL REMEMBER MR. MCALEXANDER'S TESTIMONY THAT ARITHMETIC PROCESSING TELLS YOU WHAT THE DIFFERENCE IS SO YOU GET AN INDICATION.

WHAT ARE YOU DOING? YOU'RE TAKING THE

DIODE THAT LOOKS AT ALL THE LIGHT AND YOU'RE LOOKING AT THE DIODE THAT HAS ONLY INFRARED, AND YOU SUBTRACT IT OUT AND YOU GET THE VISIBLE LIGHT. IT'S PRETTY STRAIGHTFORWARD. IT'S GENIUS. THEY SHOULD BE COMPLIMENTED NOT CHALLENGED ON THE VALIDITY OF THEIR PATENT.

SO, THIS PATENT IS NOT VALID, THEY HAVE THE BURDEN BY CLEAR AND CONVINCING EVIDENCE. THEY DIDN'T BRING YOU A SINGLE PATENT ABOUT AN AMBIENT LIGHT SENSOR AND SAY, HERE'S THE AMBIENT LIGHT SENSOR PATENT THAT DOES IT THE SAME WAY. THEY SAID, HERE'S THE PDIC THING. IT DOESN'T DO IT, BUT IT LOOKS SORT OF THE SAME. THEY'LL PROBABLY SHOW YOU PICTURES ABOUT, WELL, IT LOOKS SORT OF THE SAME. WELL, A GLASS AND A CUP LOOK THE SAME. EVER TRIED TO DRINK COFFEE FROM A GLASS? IT DOESN'T REALLY WORK. JUST BECAUSE SOMETHING LOOKS ALIKE DOESN'T MEAN IT ACHIEVES THE FUNCTION THAT IT'S REQUIRED TO ACHIEVE.

SO THE LAST CLAIM IS TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS, AND THIS IS PRETTY STRAIGHTFORWARD. DID THEY GO TO APPLE WITH OUR TECHNOLOGY, OUR TRADE SECRETS, OUR PATENTED TECHNOLOGY AND SAY, APPLE, BUY FROM US INSTEAD? TAOS, AFTER THE DUE DILIGENCE, STARTED TO WORK ON ITS AMBIENT LIGHT SENSOR PROGRAMS, SOLD IT TO APPLE, IT WAS PUT INTO THE

IMAC AND THE IPHONE. 2005, THE IMAC. 2006, THE FIRST GENERATION IPHONE.

INTERSIL TAKES TAOS'S PATENTED TECHNOLOGY, TAOS'S APPROACH TO THIS, AND MAKES A PRODUCT, THE 2901 FIRST, AND THE '3 NEXT, THAT LOOKS EXACTLY THE SAME AS TAOS'S PRODUCT, USES THE DUAL-DIODE APPROACH, INTERLEAVED PHOTODIODE ARRAY, A 1:1 RATIO IN AREA, MULTIPLE CELLS, ALL THE THINGS THAT YOU DON'T SEE ONE PIECE OF EVIDENCE BEFORE TAOS MET INTERSIL THAT INTERSIL HAD. YOU WON'T FIND THE DESIGN REVIEW DOCUMENT THAT HAD ALL THOSE FEATURES IN IT BEFORE THEY MET US.

BUT MR. MCCABE SHOWED YOU, THEY CAME UP WITH IT SOMEHOW TWO MONTHS LATER, AND THE SAME PERSON WHO DID THE DUE DILIGENCE COMES UP WITH THE NEW PHOTODETECTOR LAYOUT. LIKE HE SAID, IF HE'D KNOWN ABOUT IT SINCE 2003, BECAUSE HE'D BEEN WORKING ON PDIC'S, WHY DIDN'T HE DO IT IN 2003, WHY DIDN'T HE DO IT IN 2004 BEFORE HE MET US?

JANUARY 20, 2005, THEY'RE ALREADY AT APPLE. HERE YOU GO, APPLE. WE GOT A PRODUCT FOR YOU. WHAT'S IT SAY? WE CAN GIVE YOU SAMPLES IN A MONTH TO USE IN YOUR COMPUTERS. AND IT WAS APPLE AND INTERSIL, YOU'VE HEARD EVIDENCE, AND YOU WILL HEAR FROM THE DEFENDANTS THAT THERE WERE ALL THESE COMPETITORS. WHEN IT COMES TO APPLE, SHOW ME AN E-MAIL WHERE THEY'RE EVALUATING OTHER

PEOPLE. SHOW ME WHERE APPLE HAS EVER BOUGHT A DIGITAL AMBIENT LIGHT SENSOR FROM ANYONE OTHER THAN TAOS. DID I SAY THAT? ANYONE OTHER THAN TAOS? THEY SAID, IT'S JUST INTERSIL THAT USED TO COMPETE WITH THEM.

OVER AND OVER AGAIN, THE E-MAILS SAY, TAOS DESIGNED IN, WE'RE TRYING TO GET IN, WE'RE TRYING TO FIGURE OUT WHAT TO DO. AND THEN, THEY GET IN, FIRST TO THE IPOD USING OUR TECHNOLOGY. THEN, THE APPLE IPHONE PLATFORM, APPLE SECOND IPHONE. THEY FINALLY DID IT. THEY TOOK THE 29003, GAVE IT TO APPLE, AND APPLE SAID, FINE, WE'LL USE THAT.

APPLE HAS INCLUDED A TAOS AMBIENT LIGHT SENSOR IN EVERY IPHONE IT'S MADE EXCEPT ONE. WHEN INTERSIL WENT TO IT IN 2006 USING TAOS'S PATENTED TECHNOLOGY AND TAOS'S TRADE SECRETS AND GAVE THEM THAT AMBIENT LIGHT SENSOR, APPLE DECIDED TO MAKE A SWITCH. BUT AFTER THAT, BECAUSE THEY COULDN'T PERFORM WELL, BECAUSE THEY COULDN'T FIGURE OUT HOW TO MAKE THOSE THINGS WORK, BECAUSE IT WASN'T THEIR OWN DESIGN, THEY WERE USING SOMEBODY ELSE'S DESIGN AND COULDN'T MAKE IT WORK, COULDN'T MAKE IT WORK AS WELL AS WE DID, EVERY PHONE. THAT'S A TESTAMENT TO HOW POWERFUL AND HOW GREAT THOSE PRODUCTS ARE AND HOW VALID AND SUCCESSFUL THE PRODUCTS MADE UNDER THAT PATENT ARE.

NO COMPETITORS OTHER THAN INTERSIL FOR A

DUAL-DIODE DIGITAL AMBIENT LIGHT SENSOR. IF YOU HEAR ABOUT COMPETITORS, THE QUESTION YOU NEED TO ASK IS, DO THEY HAVE A DUAL-DIODE DIGITAL AMBIENT LIGHT SENSOR?

SO, WITH RESPECT TO TORTIOUS INTERFERENCE, TAOS LOST OUT ON 69 MILLION UNITS. 69 MILLION AMBIENT LIGHT SENSORS GOT SOLD TO APPLE BY INTERSIL WRONGFULLY. TAOS WAS IN THE IPHONE 1, WAS RAMPING UP TO SELL TO THE IPHONE 2, HAD A CONTRACT WITH APPLE, HAD GOTTEN STATEMENT OF WORKS WITH APPLE, WAS IN OTHER APPLE PRODUCTS. BUT INTERSIL, USING THEIR TECHNOLOGY, WAS ABLE TO UNSEAT THEM FROM ONE IPHONE, SO THAT $13 MILLION IS MONEY THAT TAOS LOST BECAUSE IT DIDN'T MAKE THOSE 69 MILLION SALES.

SO, WHEN YOU ASK, DID THEY TORTIOUSLY INTERFERE? THE ANSWER IS YES, AND IT'S $13 MILLION IN DAMAGES.

NOW, THERE'S TWO OTHER CONCEPTS THAT WE HAVEN'T REALLY TALKED ABOUT DURING THE COURSE OF THIS TRIAL. ONE IS CALLED WILLFUL INFRINGEMENT. IN THIS CASE, YOU HAVE TO DETERMINE IF INTERSIL INFRINGED THE PATENT, WHICH WE TALKED ABOUT, WHETHER THEY DID THIS WILLFULLY. IT REQUIRES EVIDENCE THAT THE DEFENDANT ACTED RECKLESSLY. IN ADDITION TO THAT, THERE'S A CONCEPT IN TEXAS LAW CALLED EXEMPLARY DAMAGES, DAMAGES MEANT TO PUNISH OR TO STOP PEOPLE FROM PERFORMING

WRONGFUL ACTS. IT'S A PENALTY. AND THAT'S FOR THE TRADE SECRET AND TORTIOUS INTERFERENCE CLAIMS.

AND SO I WANT TO TALK ABOUT THE EVIDENCE THAT SHOWS THAT INTERSIL KNEW WHAT IT WAS DOING AND DECIDED TO DO IT ANYWAY, KNEW THAT IT WAS LYING, CHEATING, AND STEALING, AND DECIDED TO GO ON THAT COURSE OF ACTION ANYWAY.

WE TALKED ABOUT THIS DOCUMENT. THEIR CEO AND COO, THEIR DESIGN ENGINEER, THEIR GENERAL COUNSEL, THEY ALL KNEW ABOUT OUR PATENT AND DECIDED, WE'RE NOT GOING TO REDESIGN. WE DON'T HAVE TO. WE DON'T NEED TO. WE'LL SEE WHAT HAPPENS.

SAMSUNG TELLS THEM, YOU'RE MAKING A PATENTED PRODUCT THAT MAY INFRINGE TAOS'S PRODUCT USING TWO PHOTODIODES, IT OBTAINS A VISIBLE GRAPH COMBINING THE TWO PHOTODIODES. WHAT DO THEY DO? DO THEY STOP MAKING IT? DO THEY TELL SAMSUNG, WE HAVE A DIFFERENT PRODUCT YOU CAN BUY INSTEAD THAT DOESN'T DO IT THIS WAY? NO. TYPICAL INTERSIL. YOU KNOW WHAT? IF YOU GET SUED, WE'LL PAY FOR IT. WE'LL INDEMNIFY YOU.

AND HERE'S THEIR OWN DESIGN REVIEW OF THE 29003. LOOK ON THE RIGHT-HAND SIDE IN PLAINTIFF'S EXHIBIT 137, FEW PAGES DOWN. THAT'S A TAOS DATA SHEET. IN THEIR OWN DESIGN REVIEW, THEY'RE COPYING TAOS'S PRODUCT. DON'T TAKE MY WORD FOR IT. WHAT DID DR. LIN

SAY? YOU DIDN'T WRITE THIS DOCUMENT. I COPIED FROM COMPETITOR DATA SHEET. COMPETITOR'S TAOS? YEP. 2560, 2561? YES. THEY ADMIT THEY'RE COPYING OUR PRODUCT.

AND THE 76683, WE TALKED ABOUT THAT PRODUCT VERY BRIEFLY WITH MR. MCALEXANDER, BUT YOU'LL REMEMBER THAT ONE OF THE THINGS THAT MR. MCALEXANDER DID WITH PRODUCTS IS NOT JUST LOOK AT DATA SHEETS. HE LOOKED AT CIRCUIT DIAGRAMS, HE LOOKED AT DESIGN REVIEWS, HE LOOKED AT FEASIBILITY STUDIES. HE GOT SOME OF THESE IMAGES UNDER A MICROSCOPE. HE GOT CROSS-SECTION IMAGES AND SHOWED YOU SOME OF THESE PICTURES LIKE THIS ONE.

THIS IS ONE OF THE ONES THAT HE SHOWED US. THIS ONE'S FUNNY, THOUGH. IT HAS THIS FUNNY NUMBER, ISL76683. THAT'S NOT LIKE ANY OF THE OTHER NUMBERS WE'VE TALKED ABOUT DURING THE LAST THREE WEEKS. WHAT HAPPENS WHEN YOU STRIP THE PACKAGING AWAY AND LOOK AT THE DIE? IT SAYS 29003. EVEN AFTER THIS LAWSUIT WAS FILED, THEY'RE INTRODUCING NEW PRODUCTS WITH A DIFFERENT NAME, DIFFERENT NUMBERING MECHANISM, BUT STILL USING THE SAME DIE FOR THE 29003. I THOUGHT THEY'D COME UP WITH BETTER WAYS.

THEY'RE COPYING THE COMPETITOR. THEY TALK ABOUT IT ALL THE TIME, WHETHER THEY ACTUALLY END UP DOING IT OR NOT, THEY'RE ALWAYS TALKING ABOUT COPYING TAOS WITH EVERYTHING, 2 BITS VERSUS 4 BITS. EVEN THE

INTERRUPT, THEY'RE COPYING.

AND THEN, YOU CAN SEE THAT THERE'S A MALICIOUS INTENT THAT'S THERE AT INTERSIL. MR. STECIW, OVER AND OVER AGAIN, TALKS ABOUT HOW MUCH PAIN THEY CAN INFLICT ON TAOS. WE HURT THEM BIG TIME. THEY TAKE PLEASURE IN COMPETING WITH TAOS USING TAOS'S TECHNOLOGY AND TAOS'S PATENTED INFORMATION. THEY WANT TO PUT TAOS OUT OF BUSINESS ONCE AND FOR ALL. DID YOU SEE ANY OTHER E-MAILS WHERE THEY TALKED ABOUT OTHER COMPETITORS THAT WAY? I THOUGHT THERE WAS 18, 20 COMPETITORS OUT THERE. HOW COME YOU DON'T SEE E-MAILS LIKE THAT ABOUT OTHER PEOPLE? WHY TAOS? WHY DID THEY HAVE TO PUT US OUT OF BUSINESS ONCE AND FOR ALL?

LET'S GET APPLE READY. "THIS PART WILL BE THE LAST NAIL IN THE TAOS COFFIN." THIS IS NOT THE AMERICAN WAY. THIS IS NOT HOW YOU COMPETE. FIRST OF ALL, YOU DON'T LIE, CHEAT, AND STEAL. BUT THEN, THIS, THIS TYPE OF INTENT, TO PUT THE COMPANY OUT OF BUSINESS, TO BE THE LAST NAIL IN THEIR COFFIN? SO, WHEN YOU LOOK AT QUESTIONS ABOUT MISAPPROPRIATION, THE QUESTION WILL ASK YOU, DID WE PROVE THAT THEY ACTED WITH FRAUD, MALICE, OR GROSS NEGLIGENCE. IT'S RARE THAT YOU SEE E-MAILS LIKE THAT, ONE COMPANY TALKING ABOUT ANOTHER COMPANY. THAT'S FRAUD, MALICE, AND GROSS NEGLIGENCE. THEY WERE COPYING ON PURPOSE.

THEY WERE TRYING TO GET THAT APPLE BUSINESS. THEY HAD TO BE THAT TYPE OF PRODUCT IN ORDER TO GET THE APPLE BUSINESS. APPLE WASN'T BUYING ANYTHING OTHER THAN A DIGITAL DUAL-DIODE. EVEN TO THIS DAY IN 2015, THAT'S ALL THAT APPLE BUYS. SO, THE ANSWER IS YES.

AND WHAT SUM OF MONEY? HIS HONOR WILL INSTRUCT YOU, AS HE HAS, THAT'S UP TO YOU TO DETERMINE. WHAT YOU KNOW IS, THEY TRIED TO PUT US OUT OF BUSINESS, AND THE MISAPPROPRIATION OF THE TRADE SECRETS CAUSED US UP TO $49 MILLION IN DAMAGES. THE $49 MILLION IS MONEY THEY MADE DOING THE WRONG THING. IN THE AMERICAN JUDICIAL SYSTEM, YOU DON'T GET TO KEEP YOUR MONEY IF YOU STOLE IT. YOU HAVE TO GIVE IT BACK. THAT $49 MILLION THEY MADE SELLING AMBIENT LIGHT SENSORS IS PROFITS THAT ARE ILL-GOTTEN GAINS. THEY SHOULD HAVE NEVER HAD THAT MONEY IN THE FIRST PLACE, SO THEY SHOULD PAY THAT BACK.

AND WHEN YOU TALK ABOUT INTERSIL, YOU'RE TALKING ABOUT A VERY LARGE CORPORATION. ITS NET WORTH IS $950 MILLION. WHEN YOU TAKE $49 MILLION FROM A COMPANY THAT'S NET WORTH IS $950 MILLION, IT'S LIKE TAKING A DOLLAR OUT OF MR. MCCABE'S POCKET WHEN HE HAS 20. HE MIGHT NOT WANT YOU TO TAKE THE DOLLAR, BUT HE'S NOT REALLY GOING TO MISS IT THAT MUCH.

SO THIS IS WHERE YOU GET TO TELL INTERSIL,

THOSE RULES THAT MR. MCCABE TALKED ABOUT THREE WEEKS AGO, THAT I TALKED ABOUT TODAY, ABOUT LYING AND CHEATING AND STEALING, WHAT WE TEACH OUR KIDS, HOW WE WERE TAUGHT IN SUNDAY SCHOOL, WHAT WE THINK IS THE APPROPRIATE WAY THAT HUMAN BEINGS SHOULD ACT TOWARD ONE ANOTHER, THOSE RULES APPLY IN THE BUSINESS WORLD.

AND THE SAME THING WITH RESPECT TO TORTIOUS INTERFERENCE. THEY SHOULDN'T HAVE GONE TO APPLE WITH OUR INFORMATION. IT WOULD HAVE BEEN ONE THING FOR THEM TO COMPETE GENERALLY. IT'S ANOTHER THING FOR THEM TO COMPETE IMPROPERLY. AND SO THE ANSWER IS YES HERE, AND AGAIN, THIS IS UP TO YOU TO DETERMINE HOW MUCH YOU BELIEVE SHOULD BE AWARDED AS EXEMPLARY DAMAGES TO PUNISH OR AS A PENALTY, TO TELL THEM, THIS TYPE OF CONDUCT DOESN'T FLY IN TEXAS.

AND HE TOLD YOU THAT THEIR NET WORTH IS $957 MILLION. AND THEN WILLFUL INFRINGEMENT. THAT'S ONE OF THE LAST QUESTIONS YOU'LL BE ASKED, AND YOU'LL HAVE TO DETERMINE WHETHER THEIR INFRINGEMENT WAS WILLFUL, THEY KNEW ABOUT A PATENT FOR THE DUE DILIGENCE, THEY THOUGHT IT WAS CLEVER, THEY THOUGHT THAT WE'D DONE IT IN A NEW WAY, AN INTERESTING WAY, THEY THOUGHT THAT IT WAS THE SAME LINE OF PRODUCTS THAT THEY SHOULD DEVELOP, AND THEY DID USING OUR PATENTED TECHNOLOGY.

THIS IS NOT AN ACCIDENT THAT THEY INFRINGED

OUR PATENT. THEY SET ON A COURSE OF ACTION TO LIE, CHEAT, AND STEAL. THEY SET OUT ON A COURSE OF ACTION TO USE OUR TECHNOLOGY, OUR TRADE SECRETS, OUR KNOW-HOW, A HUNDRED YEARS OF AMBIENT LIGHT SENSOR AND OPTOELECTRONIC EXPERIENCE THAT THESE PEOPLE PUT TOGETHER, A COMPANY THEY HAD STARTED JUST SIX YEARS BEFORE, WERE STRUGGLING, AND THEY DECIDE, LET'S NOT BUY THEM, LET'S TAKE THEIR STUFF AND LET'S PUT THEM OUT OF BUSINESS ONCE AND FOR ALL.

I'LL HAVE A CHANCE TO TALK TO YOU ONE MORE TIME AFTER MR. BRAGALONE SPEAKS, BUT AS YOU'RE LISTENING TO MR. BRAGALONE, THE THINGS YOU NEED TO THINK ABOUT ARE THE THINGS THAT WE TALKED ABOUT THAT FALL INTO THOSE FIVE CATEGORIES. DID THEY LEARN ABOUT OUR INFORMATION? IF IT WASN'T VALUABLE, WHY WERE THEY PAYING $45 MILLION FOR IT? DID THEY LEARN ABOUT OUR PATENTED TECHNOLOGY? AND DID THEY START USING OUR PATENTED TECHNOLOGY WITHIN WEEKS, WEEKS OF MEETING US?

AND WHEN IT TOOK THEM TWO YEARS TO DO THEIR FIRST PRODUCT, WHICH WAS HORRIBLE, HOW IS IT THAT THEY WERE ABLE TO GO TO ONE OF THE BEST CORPORATIONS WITH SOME OF THE GREATEST TECHNOLOGY OUT THERE, APPLE CORPORATION, FIVE MONTHS AFTER DOING A DESIGN REVIEW FOR THE 29001? THAT TIME LINE DOESN'T MAKE SENSE. YOU HEARD IT TAKES A YEAR-PLUS TO DEVELOP A PRODUCT,

SOMETIMES YEARS. FIVE MONTHS, DESIGN REVIEW CHANGE, USE OUR TRADE SECRETS, USE OUR PATENTED TECHNOLOGY, AND THEY'RE AT APPLE. AND THEY HURT US BIG TIME.

THE COURT: ALL RIGHT. THANK YOU, MR. ALIBHAI.

MR. ALIBHAI: THANK YOU, YOUR HONOR.

THE COURT: LADIES AND GENTLEMEN, YOU'VE BEEN IN THE COURTROOM FOR A LITTLE OVER AN HOUR. MR. BRAGALONE NOW HAS AN OPPORTUNITY TO MAKE HIS FULL ARGUMENT TO YOU. DO YOU WANT TO HEAR THAT, OR DO YOU WANT TO TAKE A 10-MINUTE RECESS?

MR. BRAGALONE: YOUR HONOR, IF I MIGHT ASK FOR A SHORT RECESS MYSELF JUST TO SET UP?

THE COURT: OKAY. LET'S HAVE A 10-MINUTE RECESS.

COURT SECURITY OFFICER: ALL RISE.

(JURY NOT PRESENT)

THE COURT: WE'LL RECESS FOR 10 MINUTES.

(BREAK TAKEN FROM 2:26 P.M. TO 2:38 P.M.)

(JURY NOT PRESENT)

COURT SECURITY OFFICER: ALL RISE.

THE COURT: ALL RIGHT. PLEASE TAKE YOUR SEATS. MR. ALIBHAI AND MR. MCCABE, JUST SO YOU KNOW, I CALCULATE THAT YOU HAVE 24 MINUTES LEFT.

MR. MCCABE: THANK YOU, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT.
MR. BRAGALONE, ARE YOU READY?
MR. BRAGALONE: YES, YOUR HONOR.
THE COURT: ALL RIGHT.
MR. WESTBERG, PLEASE BRING IN THE JURY.
COURT SECURITY OFFICER: ALL RISE.
(JURY PRESENT)
THE COURT: ALL RIGHT. YOU MAY BE SEATED.
ALL RIGHT, LADIES AND GENTLEMEN, PLEASE GIVE YOUR ATTENTION TO MR. BRAGALONE.
MR. BRAGALONE?
MR. BRAGALONE: LADIES AND GENTLEMEN OF THE JURY, I TOO WANT TO THANK YOU SO MUCH FOR BEING HERE AND ESPECIALLY BEING HERE FOR THE PAST THREE OR FOUR WEEKS, MUCH LONGER THAN ANY OF US IN THE COURTROOM BELIEVED WE WERE GOING TO HAVE TO TAKE TO GO THROUGH THIS TRIAL. BUT MY CLIENT, INTERSIL, ESPECIALLY, WANTS TO PASS ON ITS THANKS TO YOU BECAUSE OF WHAT YOU'RE DOING HERE, ENGAGING IN JURY SERVICE. THEY HAVE AN OPPORTUNITY FOR A FINAL RESOLUTION OF THIS MATTER, AND AFTER YEARS, SIX YEARS OF LITIGATION, TO FINALLY GET THE VERDICT THAT THEY'VE BEEN LOOKING FOR, THE ACQUITTAL OF THESE HORRENDOUS CHARGES THAT HAVE BEEN LEVIED BY THE PLAINTIFF, TAOS.
LET ME GO THROUGH SOME OF THE FACTORS THAT

I BELIEVE ARE GOING TO DEMONSTRATE THAT YOU SHOULD RENDER A VERDICT IN FAVOR OF INTERSIL. FIRST OF ALL, LET'S GET TO THE KEY POINTS. INTERSIL MADE TWO, NOT ONE, BUT TWO GOOD-FAITH OFFERS TO ACQUIRE TAOS. INTERSIL COMPARED THE ALTERNATIVES, AS THEY WERE ENTITLED TO DO. THEY LOOKED AT THE INTERNAL INFORMATION, AND WHAT DID THEY DO? THEY DECIDED TO BUY. THEY DECIDED TO INCREASE THEIR OFFER JUST LIKE THEY SAID THEIR PLAN WAS.

INTERSIL INDEPENDENTLY DEVELOPED ITS LINE OF AMBIENT LIGHT SENSORS. TAOS CANNOT PROVE AND DOESN'T PROVE THAT INTERSIL MISAPPROPRIATED ANY TRADE SECRETS. WHEN INTERSIL DID INVESTIGATE THE DEVICE, IT DID SO LAWFULLY. AFTER YEARS OF TRIAL AND ERROR, INCLUDING TRIAL AND ERROR RELATED TO ITS FIRST DIGITAL LIGHT SENSOR PRODUCT, INTERSIL ULTIMATELY DEVELOPED A SUCCESSFUL LIGHT SENSOR IN THE ISL29003, AND THAT WAS THE ONE THAT WAS SELECTED BY APPLE FOR USE IN THE SECOND GENERATION IPHONE.

TAOS, HOWEVER, AFTER THAT HAPPENED, USED UNFAIR COMPETITIVE TACTICS TO DRIVE INTERSIL OUT OF THE MARKETPLACE. TAOS'S PATENT INFRINGEMENT CLAIMS ARE WHOLLY WITHOUT MERIT. TAOS IS ENTITLED ONLY, AS YOU'VE SEEN, TO NOMINAL DAMAGES FOR THE BREACH OF CONTRACT ALLEGATION RELATING TO RETENTION OF DOCUMENTS.

NOW, WHERE MOHAN MAHESWARAN FIRST LEARNED OF TAOS WAS NOT FROM RICK FURTNEY BUT FROM A BROADVIEW PRESENTATION BOOK THAT HE RECEIVED ON APRIL 7, 2004. IN FACT, THAT BOOK PROVIDED INTERSIL WITH A WHOLE HOST OF POTENTIAL ACQUISITIONS. ONE OF THEM WAS TAOS, AND HE FOLLOWED UP. IN FACT, YOU'VE HEARD ABOUT THIS CONTACT WITH RICK FURTNEY. AS IT TURNED OUT, MR. FURTNEY DIDN'T GET BACK TO MR. STRIPPOLI, AND SO MR. STRIPPOLI ACTUALLY HAD TO RESPOND AGAIN. HE SAID, MR. FURTNEY, SINCE I DID NOT RECEIVE A RESPONSE FROM MY ORIGINAL MESSAGE BELOW, I THOUGHT I WOULD RESEND IT. THIS HAPPENS ON APRIL 26TH.

MR. FURTNEY ULTIMATELY WRITES BACK AND SAYS, I AM INTERESTED IN TALKING TO YOU ALONG WITH ANOTHER GENERAL MANAGER AT INTERSIL. MY ASSISTANT CAN SET UP THE CONFERENCE CALL. AND THEN FINALLY, THAT PERSON IS MOHAN MAHESWARAN. HE GETS INVOLVED HERE IN MAY OF 2004 WELL AFTER HE FIRST LEARNED OF TAOS THROUGH THE BROADVIEW PITCH BOOK.

AND LET'S GO TO ONE OF THE EXHIBITS THAT TAOS BROUGHT UP ABOUT THIS ALLEGED LICENSE, ID 854. I WANT TO SHOW YOU THE REST OF WHAT THEY DIDN'T SHOW YOU ABOUT THIS FIRST MEETING. SO, MR. FURTNEY COMES BY, BUT THEN THERE'S AN UNIDENTIFIED COLLEAGUE OF RICK'S WHO CAME BY LATER TO DISCUSS THE TSL2500. NOW, HE ASKED, APPARENTLY, ABOUT ROYALTY PAYMENTS, THIS UNIDENTIFIED

PERSON, BUT THERE'S NOTHING IN HERE ABOUT A LICENSE. THERE'S NOTHING IN HERE ABOUT A PATENT LICENSE AS TAOS'S LAWYERS HAVE MISLED YOU ABOUT. IN FACT, TO THE CONTRARY, HE'S ASKING ABOUT WORKING SOMETHING OUT SO THEY COULD SELL OUR DEVICE. THAT'S A RESELL AGREEMENT, WHICH WAS ONE OF THE THINGS THAT KIRK LANEY AND MOHAN MAHESWARAN DID TALK ABOUT LATER.

SO, AFTER THEY ORIGINALLY HAD THIS INTRODUCTION, THEY ENGAGED IN DUE DILIGENCE. MOHAN MAHESWARAN SAID HE WAS INTERESTED IN TAOS FOR SEVERAL REASONS. HE THOUGHT TAOS COULD HELP INTERSIL WITH ITS PDIC DEVELOPMENT BECAUSE TAOS HAD A WHOLE HOST OF EXPERIENCED OPTICAL ENGINEERS. TAOS WAS ALWAYS GOING TO BE A TWO-PART DUE DILIGENCE, AND THIS IS IMPORTANT. HE TOLD LANEY, DON'T DISCLOSE CONFIDENTIAL INFORMATION THAT YOU THINK IS CRITICAL TO YOUR FUTURE, AND LANEY ACKNOWLEDGED THIS.

HE TOLD LANEY THAT INTERSIL HAD A LIGHT SENSOR PLATFORM BEFORE HE MET WITH TAOS. AND HE NEVER HAD ANY UNDERSTANDING THAT THE VALUATION OF A BUSINESS BETWEEN THE COMPANIES WAS NOT A PERMITTED USE UNDER THE NONDISCLOSURE AGREEMENT. IN FACT, LANEY ALWAYS KNEW THAT INTERSIL COULD BE A COMPETITOR.

HERE, ON MAY 19, 2004, BEFORE THEY EVER ENTERED INTO A CONFIDENTIALITY AGREEMENT, LANEY

ACKNOWLEDGES, THERE IS A POSSIBILITY OF COMPETING IN THE FUTURE IF WE ULTIMATELY GO OUR SEPARATE WAYS. MOHAN ALSO ECHOED THIS. ABOUT TELLING THEM ABOUT THE PRODUCT DEVELOPMENT, MOHAN DISAGREES WITH MR. LANEY. HE SAYS, IN RESPONSE TO A QUESTION, OKAY, DID YOU DISCUSS AT ALL THAT INTERSIL HAD BEEN WORKING ON SENSORS IN THIS SPACE? WE DID.

NOW, YOU'LL NOTICE, THE QUESTIONS THAT WERE ASKED TO MR. LANEY, DID YOU SEE INTERSIL AS A COMPETITOR, DID INTERSIL HAVE COMPETITIVE DEVICES? NO. BOTH PARTIES AGREE AT THIS TIME THAT INTERSIL HADN'T RELEASED AN AMBIENT LIGHT SENSOR, BUT MOHAN MAHESWARAN TESTIFIED UNDER OATH THAT HE TOLD TAOS THAT THEY WERE WORKING ON DEVELOPING SENSORS, AND MR. MAHESWARAN IS INDEPENDENT. HE CAME HERE OF HIS OWN VOLITION. HE WANTED TO BE SURE THAT THE TRUTH CAME OUT. HE DOESN'T STAND TO BENEFIT, LIKE EVERY SINGLE ONE OF THE TAOS WITNESSES YOU HEARD FROM.

AND THINK ABOUT IT. DID ANYBODY FROM APPLE COME TO SUPPORT TAOS'S STORY? DID ANYONE FROM BROADVIEW OR JEFFRIES COME TO SUPPORT THAT STORY? I WOULD SAY TO YOU THAT ONLY TAOS'S WITNESSES SHOWED UP, AND SOME OF THEM DIDN'T EVEN MAKE THE TRIP.

SO, LANEY AGREED TO THE TWO-PART DUE DILIGENCE, IT WAS ACKNOWLEDGED HERE IN THIS NOTE FROM

TODD COLEMAN. AND THIS IS HOW THEY DID THEIR NOTES. HE SAID HE HAD A TUESDAY, JUNE 4, 2004, WITH KIRK LANEY, CONVERSATION WITH LANEY. THAT'S WHAT THIS INTERNAL NOTE IS, THAT LANEY AGREED TO BREAK THE PROCESS INTO TWO STEPS, THE FIRST STEP DESIGNED TO MAKE INTERSIL KNOWLEDGEABLE ON COMPANY PRODUCTS, OPPORTUNITY MARKETS, ETC. WHAT DOES HE SAY? WITHOUT COMPROMISING COMPETITIVE POSITION. SO, TAOS AND LANEY KNEW ALL ALONG THAT THEY SHOULDN'T DISCLOSE TRADE SECRETS, AND YOU KNOW WHAT? THEY DIDN'T.

SO, BROADVIEW WORKED AND VALUED THE TAOS DEAL. THEY ACTUALLY LOOKED AT TEN DIFFERENT OTHER ACQUISITIONS OF SIMILAR COMPANIES. SO THEY VALUED THE TAOS DEAL LOW AT 20 MILLION; MEDIUM, 30; MEAN, 31; AND A HIGH OF $42 MILLION. THESE WERE THE ADVISERS TO INTERSIL ON THIS DEAL. AND THEY MAKE MONEY LIKE A REALTOR ONLY WHEN A SALE ACTUALLY HAPPENS, SO THEY WERE INTERESTED IN CLOSING THE SALE.

INTERSIL'S BOARD APPROVED A DEAL IN THE RANGE OF 35 TO $45 MILLION. AND THEN, INTERSIL AND TAOS, TOGETHER, COLLABORATED TO DETERMINE WHETHER IT -- THERE WAS A BUSINESS FIT. YES, IT'S ABSOLUTELY TRUE THAT TAOS SENT FINANCIAL INFORMATION TO INTERSIL, AND INTERSIL DID WITH THAT INFORMATION WHAT IT WAS SUPPOSED TO DO. THEY INVESTIGATED -- HERE'S DAVID CRAIG SENDING

FILES. HE SAYS, THIS WILL -- INCLUDES RECLASSING SOME OF THE OPERATING EXPENSES AND ANOTHER LEVEL OR TWO OF DRILL DOWN ON THE MARGINS WE ARE RUNNING AND THE WAFER EXPENSES WE ARE PAYING.

SO THE PARTIES NEEDED TO GET TOGETHER AND DETERMINE THAT IF THE COMPANIES COMBINED INTERSIL WOULD BE ABLE TO SAVE MONEY FOR THE COMBINED COMPANIES. SO, WOULD THEY, FOR EXAMPLE, REDUCE THE WAFER COSTS OF TAOS? THEY HAD NO REASON TO LOOK AT THIS ISSUE OTHER THAN TO SEE WHAT THE BENEFITS WOULD BE OF MERGING THE COMPANIES.

AND IN FACT, THEY DETERMINED THAT AFTER THEY UPDATED THE MODEL WITH ADDITIONAL SHEET ON WAFER COST DETAILS, THAT BASED ON THE INFORMATION THE UPDATED FINANCIAL MODEL COULD PROVIDE AN AVERAGE 25 PERCENT WAFER COST SYNERGIES. SO, TAOS AND INTERSIL TOGETHER WERE LOOKING AT THE BUSINESS FIT.

AND BASED ON THIS, INTERSIL INITIALLY OFFERS $30 MILLION TO BUY TAOS. THIS IS THE PRELIMINARY TERM SHEET, AND YOU HEARD LOTS OF TESTIMONY THAT DURING THE TWO STAGES OF DUE DILIGENCE, THIS IS HOW IT'S DONE WITH THE INITIAL STAGE, 15 MILLION IN CASH, ANOTHER 15 MILLION IN CONTINGENT COMPENSATION BASED ON EARN-OUTS.

TAOS'S LAWYERS TOLD YOU SOMETHING DIFFERENT. THEY STOOD UP HERE IN OPENING, AND THEY REPRESENTED TO YOU THAT LANEY COUNTERED THIS AND NEVER

RECEIVED A RESPONSE. WHAT DID THEY TELL YOU? HE WAS FRUSTRATED, BUT IN THE SPIRIT OF KEEPING THE NEGOTIATIONS GOING, HE MADE A COUNTEROFFER. HOWEVER, THERE WAS NO -- NOTHING TO BE HEARD FROM INTERSIL.

THEY WENT ON, BUT HE DID NOT GET A COUNTERPROPOSAL OF ANY KIND. AND FINALLY, HIS COUNTEROFFER WAS NOT EVEN RESPONDED TO, AND THEN THEY JUST SAID, BYE-BYE. THAT WAS THE STORY THAT THEY TOLD YOU IN OPENING STATEMENTS, BUT LADIES AND GENTLEMEN, THAT JUST ISN'T TRUE.

LANEY WAS WELL AWARE OF THE FACT THAT MOHAN WAS GOING ON VACATION. IT'S DISCUSSED IN THEIR E-MAILS. HE EVEN SAID, THANKS, MOHAN, TRY NOT TO DILUTE YOUR VACATION TOO MUCH. BUT MOHAN DID WORK ON VACATION, BECAUSE HE HAD TO CONTINUE TO SUPERVISE THE DUE DILIGENCE. IN FACT, THIS PACKAGING TEST DETAIL, SO, THIS IS ANOTHER NOTE BY JON KUNSCHNER. HE SAYS -- AND THIS IS FROM BROADVIEW -- THAT THIS IS WITH KIRK LANEY AGAIN. AND HE'S TALKING ABOUT THIS, AND HE SAYS, KIRK DID ASK TO SPEAK WITH ISL SALES FORCE TO GET A SENSE FOR THE EFFORT REQUIRED TO EQUIP THEM AND SELL THE TAOS PRODUCTS IN THE CHANNEL. FAR FROM THERE BEING ANYTHING IMPROPER ABOUT CONDUCTING A BUY VERSUS BUILD ANALYSIS, TAOS WAS AWARE OF THIS, AND INTERSIL TOLD ITS INVESTMENT BANKER, BROADVIEW, ALL ABOUT WHAT IT WAS DOING. THERE'S

NO QUESTION THAT BROADVIEW KNEW ABOUT IT. THIS IS IN BROADVIEW'S NOTES.

INTERSIL WAS IN THE MIDST OF DOING A BUILD VERSUS BUY ANALYSIS RELATING TO THE TAOS PRODUCTS, SPEARHEADED BY MOHAN AND RAJEEVA LAHRI, AND WHAT THEY ASKED ABOUT IS, THEY NEED TO BETTER UNDERSTAND THE DESIGN AND PACKAGING, TEST SECRET SAUCE. IN OTHER WORDS, WHAT CAN BE DONE TO IMPROVE THE MARGINS HERE? WHAT IS TAOS DOING THAT WE CAN IMPROVE ON IF WE PUT THEM ON OUR SYSTEMS? AND THAT'S THE INFORMATION THAT, AFTER THE FIRST OFFER, CONTINUED TO BE EXCHANGED.

AND IN FACT, THE BEST EVIDENCE OF THIS, BROADVIEW PROVIDED A TEMPLATE TO TAOS, BECAUSE TAOS WAS NOT A PUBLICLY TRADED COMPANY. THEIR FINANCIAL INFORMATION WASN'T IN THE FORM THAT IT COULD BE COMPARED WITH INTERSIL'S, SO THEY ACTUALLY PROVIDED A BLANK TEMPLATE. THE E-MAIL SAYS, ATTACHED IS A FINANCIAL TEMPLATE BROADVIEW ASKED TO BE FILLED IN. IT PROVIDES A WAY TO HELP GUIDE THEM THROUGH A HELPFUL WAY TO ORGANIZE THE FINANCIAL DATA, AND AS YOU CAN SEE, WHAT'S EXACTLY WHAT WAS ATTACHED, A BLANK TEMPLATE FOR THE SPREADSHEET.

AND TAOS, HOWEVER, NEVER ACTUALLY PROVIDED THE PACKAGING/TEST DETAIL FOR THE NEW PRODUCT. SO REMEMBER, THEY PROVIDED LOTS OF FINANCIAL DETAIL, BUT WHAT TAOS ACCUSES INTERSIL OF MISAPPROPRIATING, IT WAS

THE FINANCIAL INFORMATION ON THE PACKAGING AND TEST COSTS FOR THEIR UPCOMING PRODUCT, THE 2560 AND '61 CHIPSCALE, BUT IT'S VIRTUALLY UNDISPUTED THAT THAT INFORMATION WAS NEVER PROVIDED TO INTERSIL.

SO, IN THE WORDS OF DAVE CRAIG HIMSELF, HE SAYS, WE DID NOT INPUT DETAILS FOR ASSEMBLY, TEST, PACKAGING, BY PRODUCT OR PRODUCT FAMILY, BUT IT IS INCLUDED IN THE ALL OTHER LINE ON THE COST OF GOODS SOLD SUMMARY. AND WE SAW DURING THE TRIAL THAT THAT "ALL OTHER" LINE WAS JUST A GENERAL CATCHALL LINE. IT DIDN'T BREAK OUT ANYTHING.

AND THEY GO ON. SO, INTERNALLY, WE NOTED THAT JUST A COUPLE OF UPDATES, WHAT CHARLIE MENTIONED, WE DIDN'T GET DETAILED ANALYSIS OF ASSEMBLY AND TEST COSTS FROM THEM YET. TITAN WAS SUPPOSED TO SUPPLY US THAT LAST WEEK. AND THEY SAID, HERE IS AN EXAMPLE OF SOME GENERAL PACKAGING COSTS, BUT THEY KNOW, THESE DO NOT INCLUDE THE MULTI-DIE HYBRID-STYLE PACKAGES OR THE CLEAR GLASS SHELL CASE (CHIPSCALE) PACKAGE.

LADIES AND GENTLEMEN, THAT'S THE PACKAGE THAT THEY ACTUALLY NOW ACCUSE INTERSIL OF MISAPPROPRIATING COST INFORMATION. INTERSIL NEVER GOT IT. IN FACT, WE ASKED DAVE CRAIG ABOUT THAT IN HIS DEPOSITION. CRAIG SAID -- WE ASKED HIM, DO YOU KNOW IF -- DID TAOS EVER PROVIDE TO BROADVIEW OR INTERSIL THE

TESTING AND PACKAGING COSTS? ANSWER: "NOT THAT I KNOW OF."

AND HE WAS THE ONE PROVIDING THE INFORMATION. WE ASKED RICH TURNER TO LOOK AT THE SAME SPREADSHEET THAT MR. LANEY TOOK THE STAND, THE MONSTER SPREADSHEET, AND HE SAID, OH, IT'S IN THERE SOMEWHERE UNDER ASSEMBLY AND TEST COSTS. WE ASKED HIM, CAN YOU TELL ANYTHING ABOUT THE PACKAGING COSTS OF THE SPECIFIC PRODUCT? HE SAID, YOU CANNOT DETERMINE TAOS'S PACKAGING COSTS FOR THE TSL2560 FROM THE INFORMATION TAOS PROVIDED IN 2004. HE REVIEWED THE SAME SPREADSHEET, TOOK YOU THROUGH THAT AND SHOWED YOU HOW IT JUST SIMPLY WAS NEVER THERE.

AND IN FACT, WE ALL SAW WHAT, IN FACT, WAS THE DETAIL THAT WAS RETURNED. IT LOOKED JUST LIKE THE BLANK SPREADSHEET THAT WAS SENT TO TAOS IN THE FIRST PLACE. THEY DIDN'T FILL THIS OUT. BUT THAT WASN'T INFORMATION THAT INTERSIL HAD TO HAVE AT THE TIME BECAUSE THEY DETERMINED, ON THEIR OWN, THAT AFTER LOOKING AT WHETHER THERE WAS A BUSINESS FIT, THAT THEY HAD ENOUGH INFORMATION TO INCREASE THEIR OFFER TO TAOS. SO, THIS IS AN E-MAIL FROM KIRK LANEY. NOTICE THAT HE'S AGREEING THAT, UNDER THE MUTUAL NDA, BOTH SIDES CAN EVALUATE THE BUSINESS FIT. OBVIOUSLY, INTERSIL NEEDS TO UNDERSTAND, WHAT IS THE BENEFIT OF ACQUIRING TAOS?

AND IN FACT, THE ENGINEERS WHO LOOKED AT THE TECHNOLOGY SAID, THEY'VE GOT A ONE-YEAR HEAD START. THEY'VE GOT SAMPLES OF THE PRODUCT READY. IF WE ACQUIRE TAOS, WE WILL GET A ONE-YEAR JUMP START INTO THE MARKET. THAT WAS SIGNIFICANT. AND THAT WAS ONE OF THE REASONS WHY INTERSIL UPPED ITS OFFER. BUT IT HAD TO COMPARE WHAT IT WOULD GET FROM ACQUIRING TAOS TO WHAT IT HAD ON ITS OWN, AND BASED UPON THAT COMPARISON, THEY AGREED TO PAY MORE.

NOW, INTERESTINGLY, MR. LANEY DID HIS OWN COMPARISON. SO, THEY WANT TO TELL YOU THAT YOU CAN'T COMPARE THE DEAL WITH AN ALTERNATIVE THAT YOU HAVE IN YOUR COMPANY? WELL, MR. LANEY SURE DID. HE SAID, AS YOU KNOW, WE ARE WEIGHING POSSIBILITIES OF MERGERS AGAINST MOVING THROUGH A RAPID GROWTH PHASE WITH EQUITY INVESTMENT TO EXPAND OUR SALES, APPLICATION, AND DEVELOPMENT TEAMS. HE WAS LOOKING AT BOTH. HE WAS COMPARING WHAT IT WOULD BE LIKE TO HAVE AN EQUITY INVESTMENT VERSUS WHAT IT WOULD BE LIKE TO BE ACQUIRED AND WAS COMPARING THE TWO.

THE IDEA THAT THAT'S NOT A PERMITTED USE UNDER THE AGREEMENT IS CONTRADICTED BY WHAT TAOS DID, AND IT'S CONTRADICTED BY EVERY WITNESS, SUCH AS DR. HOBBS, DR. TURNER, WHO TOOK THE STAND AND SAID, NO, THIS IS COMMONLY DONE IN AN ACQUISITION. YOU HAVE TO

UNDERSTAND WHAT ARE THE REDUNDANCIES IN ORDER TO UNDERSTAND WHAT THE POSSIBLE SYNERGIES ARE.

AND UPON EVALUATION, INTERSIL DECIDED TO BUY. IT DIDN'T DECIDE TO GO FORWARD WITH ITS HOMEGROWN OPTO PROGRAM. YOU CAN SEE THE TEXT HERE IN DETAIL. HE SAYS, THEY'RE LOOKING AT AN INTERNALLY GROWN OPTO PROGRAM AND WHETHER THAT'S PREFERABLE TO ACQUIRING TITAN. SO WE'RE ON HOLD, AT LEAST TEMPORARILY. AND THEN WHAT DOES HE SAY? HE SAYS, "ON THE ASSUMPTION THAT WE DECIDE TO STAY ON TRACK WITH TITAN, ATTACHED IS A POTENTIAL RESPONSE TO KIRK'S COUNTEROFFER." SO, IN RESPONSE TO THIS $70 MILLION COUNTEROFFER, IF THEY DECIDED TO BUY INSTEAD OF BUILD, WHAT WERE THEY GOING TO DO?

THEY WERE GOING TO OFFER $42 MILLION; 17 MILLION OF THAT GUARANTEED WITH AN ADDITIONAL 18 MILLION SPREAD OUT OVER YEARLY TARGETS, AND FINALLY, A $7 MILLION KICKER FOR A TOTAL PACKAGE THERE OF 42 MILLION. AND IN ADDITION TO THAT, BECAUSE MR. LANEY HAD ASKED FOR $3 MILLION COMMITMENT FOR INVESTMENT INTO TAOS, THEY HAD THAT TOO, AN AGREEMENT IN PRINCIPLE TO INVEST 3 MILLION TO BUILD THE TAOS BUSINESS. AND SO THEY DECIDED TO BUY. THIS OFFER WAS COMMUNICATED. AND HOW DO WE KNOW? WE HAVE THE INTERNAL MEMO FROM DUNCAN WEAVER THAT ACTUALLY SAYS WHAT THE VERBAL OFFER WAS

THROUGH BROADVIEW. SO, THIS WAS FROM DUNCAN WEAVER AT INTERSIL, AND IT WAS DOCUMENTED BY BROADVIEW. THIS IS FROM BROADVIEW'S OWN DOCUMENTS. IT WAS THEIR JOB TO DOCUMENT THESE THINGS.

SO, THIS IS ON JULY 12TH, AND THIS OFFER SHALL BE UP TO 42 MILLION (THE CONSIDERATION) CONSISTING OF 17 MILLION IN CASH UP TO AN ADDITION CONSIDERATION OF 25 MILLION, AND THAT INDIGO AGREES IN PRINCIPLE TO INVEST AN INCREMENTAL AMOUNT OF 3 MILLION TOWARDS HUMAN RESOURCES EXPENSES AND WORKING CAPITAL TO AUGMENT THE DEVELOPMENT OF THE TITAN BUSINESS.

AND YOU'LL RECALL, WHAT DID MR. LANEY SAY ABOUT THIS? HE ACTUALLY -- HE APPRECIATED THE CALL. HE ACKNOWLEDGES THAT THERE WAS A CALL. AND I NOTE THAT WHILE THIS SAYS, WEDNESDAY, IT'S WEDNESDAY AT 12:14 A.M., AFTER MIDNIGHT, SO THE CALL YESTERDAY WOULD HAVE BEEN THE CALL ON MONDAY, THE 12TH. AND HE SAYS, I GLEANED FROM OUR MONDAY DISCUSSION THAT THERE IS A REASONABLE ENTERPRISE VALUE PERCEIVED FOR A TAOS ACQUISITION IN THE 40 TO $50 MILLION RANGE, EXACTLY THE RANGE THAT WAS COMMUNICATED.

AND HE GOES ON TO SAY, THUS, MY PUSH FOR THE DEAL HEADING FOR 70 MILLION AT THE GRAND-SLAM LEVEL MAY BE A TOUGH SALE. SO, HE KNEW HIS COUNTEROFFER WAS GOING TO BE A TOUGH SELL AT INTERSIL. HE EVEN CALLED IT

A GRAND SLAM. NOW, HE FALSELY DENIED THAT HE RECEIVED THIS OFFER. YOU SAW THAT ON THE STAND. OKAY. SO YOU'RE SAYING THERE WAS NO VERBAL OFFER THAT WAS PRESENTED TO YOU FOR 42 MILLION? I DON'T BELIEVE THERE WAS.

AND THEN, AND YOU ASKED HIM, THOUGH, REFERRING TO CONVERSATION WITH MOHAN HERE, "WHETHER THE DEALS WERE STILL ON THE TABLE, DIDN'T YOU?" "I DID." "IS THE ORIGINAL ACQUISITION OFFER SENT AS YOU WERE HEADING TO EUROPE OR THE SLIGHTLY MODIFIED VERBAL OFFER FROM DUNCAN (THROUGH BROADVIEW) STILL ON THE TABLE?" "YES, I DID."

"THIS -- THE SECOND OFFER, THAT'S WHAT I WANT TO ASK YOU ABOUT. YOU CALLED THAT AN OFFER HERE IN YOUR E-MAIL TO MR. MAHESWARAN, DIDN'T YOU?" "I DID." "AND YOU NOTED THAT IT WAS AN OFFER FROM DUNCAN. THAT'S DUNCAN WEAVER OF INTERSIL, RIGHT?" ANSWER: "IT IS." "AND THAT WAS COMMUNICATED TO YOU THROUGH BROADVIEW, RIGHT?" "CORRECT."

SO, HE RECANTED HIS PRIOR TESTIMONY THAT THERE WAS NO $42 MILLION OFFER. AND IN FACT, IN HIS OWN WORDS, HE REFERRED TO THE SLIGHTLY MODIFIED VERBAL OFFER FROM DUNCAN THROUGH BROADVIEW IN HIS SUBSEQUENT CONVERSATION WITH MOHAN MAHESWARAN. BY THAT TIME, AS YOU HEARD, INTERSIL HAD JUST ACQUIRED A COMPANY CALLED

PSI CORP. FOR 530 MILLION AND WAS UNDERGOING A REORGANIZATION, AND MOHAN WAS ACTUALLY GIVEN A RESPONSIBILITY FOR RUNNING A NEW $200 MILLION BUSINESS UNIT. AND AS A RESULT, THE OFFER WAS NO LONGER ON THE TABLE AS OF -- AS OF AUGUST HERE.

NOW, KIRK LANEY WAS TOLD THIS MIGHT HAPPEN. HE WAS ACTUALLY TOLD BY A BOARD MEMBER, JACOB JACOBSON, THAT A MORE AGGRESSIVE STANCE WITH INTERSIL OBVIOUSLY INVOLVES THE RISK OF NOT DOING INTERSIL AT ALL. "I THINK INTERSIL AS IT STANDS IS THE BETTER ALTERNATIVE." SO, BEFORE HE WENT BACK AND SPOKE TO MOHAN MAHESWARAN, HE WAS CAUTIONED IN AUGUST OF 2004, I THINK YOU SHOULD TAKE THE DEAL. THE DEAL ON THE TABLE AT THE TIME WAS THE $45 MILLION.

THEN TAOS, THEIR CEO -- I'M SORRY, CFO, DAVID CRAIG, HE ACTUALLY AGREED THAT INTERSIL'S $30 MILLION OFFER MADE SENSE BASED ON TAOS'S PAST FINANCIAL PERFORMANCE. YOU VALUE A COMPANY BASED ON PAST FINANCIALS. HE WAS ASKED, SO YOU THINK THE OFFER THAT INTERSIL SUBSEQUENTLY MADE WAS BASED ON TAOS'S PAST PERFORMANCE? IS THAT WHAT -- ABSOLUTELY CORRECT. YEAH. WAS THERE OFFER -- DID THEIR OFFER MAKE SENSE TO YOU AT THAT TIME, IF THAT WAS THE BASIS FOR IT? ANSWER: YES. I MEAN, IT -- THAT'S WHERE I FIGURED IT CAME FROM, YES.

AND IN FACT, LANEY ADMITTED LATER, AFTER

THE OFFER AND THE NEGOTIATIONS WERE DONE, THAT TAOS'S OWN FINANCIALS DIDN'T SUPPORT HIS GRAND-SLAM OFFER. HE ACTUALLY SAID, OUR PRESENT DAY FINANCIALS TURNED IT INTO A TOUGH SELL TO INTERSIL FINANCIAL FOLKS AND THEIR BOARD OF DIRECTORS. I THINK WE PARTED ON GOOD TERMS, AND PERHAPS THERE IS AN OPPORTUNITY TO REVISIT THIS IN THE FUTURE.

HE UNDERSTOOD THAT IT WAS THE FINANCIALS AND HIS OWN GREED IN ASKING, DEMANDING $70 MILLION FOR HIS COMPANY, AND THERE'S NO EVIDENCE THAT HE EVER WAVERED OFF THAT $70 MILLION DEMAND. SO, ON THE ONE HAND, MOHAN MAHESWARAN, HE GAVE THE LAST DOLLAR THAT HE HAD TO SPEND. HE HAD AUTHORIZATION UP TO 45, AND HE AUTHORIZED IT ALL IN THIS DEAL AND OFFERED IT ALL, BUT THAT WASN'T ENOUGH. AND SO INTERSIL WAS NOT ABLE TO BUY TAOS, DESPITE ITS BEST EFFORTS.

AND IF YOU LOOK AT THE FINANCIALS, IT'S NO WONDER. IN 2004, ACCORDING TO TAOS'S OWN DOCUMENT, TAOS LOST HP, ITS LARGEST CUSTOMER, AND YOU CAN SEE THE LARGEST SOURCE OF REVENUE ACTUALLY SHRUNK TO NOTHING AS IT WAS PROJECTED TO DO BY THE END OF 2004. THEIR OWN FINANCIALS TOLD A VERY SOMBER STORY. ON 7 AND A HALF MILLION DOLLARS OF GROSS REVENUE, THEY WERE ACTUALLY GOING TO LOSE $2.4 MILLION OF THE MONEY.

NOW, I'M A BIG FAN OF THE SHOW, SHARK TANK.

I'VE KIND OF GOTTEN TO -- MARK CUBAN'S ON IT. A LOT OF ENTREPRENEURS GO ON IT AND PITCH THEIR PRODUCTS. AND I THOUGHT TO MYSELF, WHAT WOULD KIRK LANEY DO IF HE WAS GOING IN THE SHARK TANK? WOULD HE SAY, I'M ASKING $7 MILLION FOR 10 PERCENT OF MY COMPANY? AND THAT MIGHT BE INTERESTING TO THE SHARKS UNTIL THEY HEARD THAT THE REVENUE FORECAST WAS A LOSS OF $2.4 MILLION. LADIES AND GENTLEMEN, IF THAT HAPPENED, I GUARANTEE YOU, EVERY ONE OF THOSE SHARKS WOULD SAY, I'M OUT. NOBODY WANTS TO PAY $70 MILLION TO LOSE $2.4 MILLION.

NOW, AT A BETTER VALUATION, BOTH BROADVIEW AND THE INTERSIL BOARD OF DIRECTORS AUTHORIZED THAT DEAL AND RECOMMENDED IT BETWEEN 42 AND 45, WHICH WERE ALL REASONABLE OFFERS.

AND THEN, YOU'VE HEARD TAOS LAWYERS FALSELY IMPLY THAT INTERSIL USED THE INADVERTENTLY AND MISTAKENLY RETAINED DOCUMENTS. YOU HEARD THEM SAY THAT INTERSIL KEPT THE INFORMATION AND THEN WENT ON TO QUICKLY CREATE A COMPETING PRODUCT BASED ON THE THEFT OF TAOS'S TRADE SECRETS. NOW, WHAT ACTUALLY HAPPENED WAS INTERSIL'S LEGAL RETENTION WAS A GOOD FAITH MISTAKE. THEY WERE RELYING ON THE DIFFERENT CONFIDENTIAL -- A DIFFERENT NDA THAT DIDN'T ACTUALLY APPLY TO THE TAOS DOCUMENTS, BUT THAT NDA HAD AN EXPRESS TERM THAT SAID, EACH PARTY MAY RETAIN ONE ARCHIVAL COPY IN ITS LEGAL

DEPARTMENT TO BE USED ONLY IN RESOLVING A DISPUTE CONCERNING THIS AGREEMENT OR FOR REGULATORY COMPLIANCE PURPOSES.

SO IN OTHER WORDS, IF THERE WAS A DISPUTE AS TO WHAT WAS DONE WITH THE INFORMATION OR WHAT WAS EXCHANGED, THEN THE LEGAL DEPARTMENT WOULD HAVE A COPY, AND SO THAT'S WHY TOM TOKOS AND DOUG BALOG HAD COPIES. IT WAS A MISTAKE. BUT YOU KNOW WHAT? IT WAS A MISTAKE THAT APPARENTLY TAOS DIDN'T PERCEIVE EITHER, BECAUSE WHEN MR. BALOG SENT HIS CERTIFICATE OF DESTRUCTION, IT REVEALS THE MISTAKE RIGHT THERE. IT SAYS, WE CERTIFY OUR DESTRUCTION UNDER THE NONDISCLOSURE AGREEMENT, NDA, BETWEEN INTERSIL CORPORATION AND BROADVIEW INTERNATIONAL, DATED JULY 1, 2004.

WELL, THEY'RE REFERRING TO THE WRONG NDA, THE ONE THAT ALLOWED A RETENTION BY THE LEGAL DEPARTMENT. NOW, WE'RE SHOWING YOU THIS TO INDICATE THAT IT WAS A MISTAKE, BUT IT WAS A MISTAKE THAT INTERSIL NEVER TRIED TO HIDE, AND IF LANEY HAD BEEN SO CONCERNED, WHY DIDN'T HE SAY SOMETHING? WHY DIDN'T HE SAY, WAIT A MINUTE, WHAT NONDISCLOSURE AGREEMENT BETWEEN INTERSIL CORPORATION AND BROADVIEW? THEY WANT TO ALLEGE THAT TOM TOKOS DID THIS INTENTIONALLY BECAUSE HE RECEIVED AN E-MAIL THAT REFERRED TO A NONDISCLOSURE AGREEMENT. HERE, THERE'S A CERTIFICATE THAT ACTUALLY

HAS THE FULL LEGAL DESCRIPTION OF IT, AND WHAT DOES LANEY SAY? HE NEVER COMPLAINED. HE SAID, "THANK YOU FOR YOUR ATTENTION TO THIS MATTER. YOUR SCANNED ORIGINAL CERTIFICATE OF DESTRUCTION HAS BEEN RECEIVED AND COVERS OUR CONCERNS."

AND IT SHOULD BECAUSE THE EVIDENCE IS UNDISPUTED THAT DESPITE THE FACT THAT INTERSIL DELIVERED REAMS OF INFORMATION TO TAOS IN THAT LAWSUIT, WE DELIVERED 28 GIGABYTES OF DATA, 26,000 DOCUMENTS, 121,000 PAGES THAT WERE BATES NUMBERED OF DOCUMENTATION. AND DESPITE ALL OF THAT, THEIR EXPERT HAD TO CONCEDE THAT THERE WAS NO EVIDENCE AT ALL OF DISSEMINATION AFTER THE PARTIES CERTIFIED DESTRUCTION.

SO, MR. MCALEXANDER ADMITS, THERE WAS NO EVIDENCE OF POST-PURGING DISSEMINATION. HOW ABOUT THE RETAINED DOCUMENTS BY THE LEGAL DEPARTMENT? HE WAS ASKED -- NEVER DISSEMINATED. GOT NO EVIDENCE OF THAT. RETAINED DOCUMENTS BY VERN KELLEY IN HUMAN RESOURCES? WERE THOSE EVER DISSEMINATED? NEVER DISSEMINATED. AND E-MAILS LEAVE TRAILS. YOU CAN'T CIRCULATE E-MAILS WITHOUT LEAVING SOME EVIDENCE OF THAT, AND THERE WAS NONE.

HOW ABOUT THE RETAINED DOCUMENTS BY DENNIS FOSTER? NEVER DISSEMINATED. RETAINED DOCUMENTS IN DUNCAN WEAVER'S E-MAIL MAILBOX? WELL, THOSE WERE NEVER

ACCESSED BECAUSE DUNCAN WEAVER, COINCIDENTALLY, LEFT THE DAY THAT THE PURGE E-MAILS WENT OUT. BUT WE FOUND ALL THOSE AND PRODUCED THEM IN THIS LAWSUIT, AND AS A RESULT OF THAT, THE JUDGE SAID, TECHNICALLY, YOU VIOLATED THE NDA. YOU DIDN'T RETURN EVERY DOCUMENT, AND SO WE'RE GOING TO FIND YOU LIABLE FOR FAILING TO RETURN DOCUMENTS, AND WE'RE GOING ALLOW THE JURY TO ASSESS ONLY NOMINAL DAMAGES RELATED TO THE RETURN OF DOCUMENTS.

NOMINAL DAMAGES. IT'S USUALLY $1 OR A FEW DOLLARS, NOMINAL DAMAGES ONLY FOR THE RETENTION OF DOCUMENTS. AND YET, THEY WAG THEIR FINGER AT TOM TOKOS AND THEY ACCUSE HIM OF LYING BECAUSE HE SAID THAT THEY HAD NOT -- THEY HAD DESTROYED DOCUMENTS AND THEY DID NOT WITHHOLD ANY DOCUMENTS. THE COURT'S ALREADY FOUND THAT THE WITHHOLDING OF DOCUMENTS DID NOT CAUSE ANY ACTUAL DAMAGE TO TAOS, AND THAT'S VERY IMPORTANT. VERY IMPORTANT.

SO -- AND THE ISSUE OF USE, TOO, WE BELIEVE, IS ANSWERED BY THIS. SO YOU'LL BE ASKED, DID INTERSIL USE ANY OF THE TAOS DOCUMENTS THAT IT INADVERTENTLY RETAINED? THERE'S NO EVIDENCE OF THAT USE ANY TIME AFTER THE DUE DILIGENCE PERIOD ENDED.

NOW, LET'S TALK ABOUT THE TRADE SECRETS CLAIM. TRADE SECRETS CANNOT BE PUBLICLY KNOWN, AND YOU'LL BE INSTRUCTED ON THE LAW, BUT IN ESSENCE, TO BE A

TRADE SECRET, THE INFORMATION MUST BE SECRET. INFORMATION THAT IS PUBLIC CANNOT BE A TRADE SECRET. MERE POSSESSION OF TRADE SECRET INFORMATION IS NOT IN AND OF ITSELF IMPROPER. THIS IS A CRITICAL POINT. TAOS MUST PROVE THAT INTERSIL WRONGFULLY USED TRADE SECRET INFORMATION. IN FACT, THE NDA ITSELF EXCLUDES CERTAIN INFORMATION FROM PROTECTION AT ALL.

THE TERM, "CONFIDENTIAL INFORMATION," SHALL NOT INCLUDE ANY INFORMATION WHICH IS GENERALLY AVAILABLE TO THE PUBLIC AS OF THE DATE OF THIS AGREEMENT, BECOMES GENERALLY TO THE PUBLIC AFTER THE DATE OF THIS AGREEMENT, ASSUMING THAT IT DOESN'T BECOME THAT WAY AS A RESULT OF INTERSIL'S FAULT. THEY CAN'T PUT IT ON THE INTERNET AND SAY IT'S PUBLIC. AND THEY DIDN'T. OR WAS KNOWN BY THE RECIPIENT PRIOR TO THE DATE OF THIS LETTER AND SUCH KNOWLEDGE WAS DOCUMENTED IN THE RECIPIENT'S WRITTEN RECORDS PRIOR TO SUCH DATE.

WHAT IS SO CRITICAL ABOUT THIS IS THAT ALL OF THE INFORMATION THAT INTERSIL IS -- SUPPOSEDLY MISAPPROPRIATED CAME THROUGH THIS NDA. ALL OF IT IS COVERED BY THESE EXCLUSIONS, SO IF THE INFORMATION MEETS ANY ONE OF THESE EXCLUSIONS, IT CANNOT BE CONFIDENTIAL INFORMATION UNDER THE PARTIES' AGREEMENT. THIS IS THE AGREEMENT THAT THE PARTIES REACHED, AND WE'RE ASKING YOU TO HOLD BOTH SIDES TO THAT AGREEMENT.

SO, DR. PHIL HOBBS TALKED ABOUT THE TRADE SECRETS CLAIM. HE SAID, ALL OF THE TECHNICAL TRADE SECRETS CLAIMED BY TAOS, WHETHER ALONE OR IN COMBINATION, WERE KNOWN TO INTERSIL OR WERE IN THE PUBLIC DOMAIN. CERTAIN TECHNICAL INFORMATION CLAIMED AS A TRADE SECRET, WELL, THAT WAS ACTUALLY IN PATENTS OR PATENT APPLICATIONS. AGAIN, YOU REMEMBER THE DEFINITION. IF IT'S PUBLIC, IT CANNOT BE CONFIDENTIAL INFORMATION UNDER THE AGREEMENT.

THE BALANCE OF THE INFORMATION, HE SAYS, ARE CONCEPTS WELL KNOWN IN THE INDUSTRY, SOMETIMES FOR SEVERAL DECADES. AND HE WENT ON TO SAY THAT THE ALLEGED TRADE SECRETS WERE EVEN ALREADY USED BY INTERSIL IN THE EL7903 AND IN THE PDIC DEVELOPMENT BEFORE IT EVER MET WITH TAOS. THIS IS SO CRITICAL. BECAUSE REMEMBER, IF INTERSIL CAN SHOW, BY ITS OWN DOCUMENTS, THAT IT ALREADY HAD CERTAIN INFORMATION, IT CANNOT QUALIFY AS CONFIDENTIAL INFORMATION UNDER THE AGREEMENT.

SO, DR. HOBBS WENT ON TO SAY, THE MANNER IN WHICH INTERSIL CONDUCTED ITS BUILD VERSUS BUY ANALYSIS IS CONSISTENT WITH THE STANDARD IN THE INDUSTRY, AND IT WAS DONE IN THE SAME WAY IN WHICH IBM CONDUCTS ITS BUILD VERSUS BUY ANALYSIS. SO, PLAINTIFFS ARE TRYING TO READ A WHOLE BUNCH INTO THIS PERMITTED USE AGREEMENT. NOWHERE IN THAT AGREEMENT DOES IT EVER SAY ANYTHING

ABOUT A BUILD VERSUS BUY ANALYSIS BEING IMPROPER, NONE AT ALL. IN FACT, DR. HOBBS IS THE ONLY WITNESS WHO CAME TO YOU AS AN EXPERT AND TESTIFIED THAT THIS IS INDUSTRY STANDARD. THIS IS ALWAYS DONE IN A PERMITTED USE, IN AN ACQUISITION SITUATION. AND YOU KNOW, TAOS DID IT TOO.

INTERSIL'S DEVELOPMENT TIME FOR THE 29001 WAS CONSISTENT WITH A NONUSE OF TAOS TRADE SECRETS, AND THAT INFORMATION FROM INTERSIL'S REVERSE ENGINEERING IN 2006 IS NOT A TRADE SECRET. THERE IS, AS HE SAID, COPYING, AND THERE IS COPYING, AND WE BELIEVE, AS HE ELABORATED, YOU CAN COPY SOMETHING ILLEGALLY. WE ALL KNOW THAT. BUT IF YOU DO SOMETHING LIKE REVERSE ENGINEERING, THAT'S PERFECTLY LEGAL, AND YOU HEARD THE COURT IN READING ITS CHARGE TO YOU ACTUALLY SAY THAT REVERSE ENGINEERING, AS THE COURT NOTED, "THE CONCEPT OF IMPROPER MEANS DOES NOT INCLUDE REVERSE ENGINEERING OF PROPERLY ACQUIRED DEVICES."

SO, IN JANUARY OF 2006, THIS BECOMES CRITICAL, BECAUSE THAT'S ACTUALLY THE FIRST TIME THAT INTERSIL LEARNED THE DETAILS OF TAOS'S DIODES. AND HE GOES ON TO SAY THAT INTERSIL'S ALS DEVICES AFTER THE 29004 USE FILTERS FOR IR REJECTION, AN APPROACH NOT USED BY TAOS.

TRADE SECRETS CANNOT BE KNOWN TO THE OTHER PARTY. IF THEY ARE, THEY'RE NOT TRADE SECRETS. SO,

LET'S SEE WHAT INTERSIL KNEW BEFORE IT EVER MET WITH TAOS. IN ITS NEW PRODUCT PROPOSAL FOR THE EL7903 -- AND BY THE WAY, YOU CAN SEE THIS PRODUCT PROPOSAL ISN'T DATED IN AUGUST, ISN'T DATED IN JUNE. IT'S DATED IN FEBRUARY OF '04, SO THIS IS WHERE THE TIME LINE FOR DEVELOPMENT AT LEAST MUST START. AND IT LISTS THE PART, AND IT SAYS IT'S GOING ON AN ALS WITH I-SQUARED C INTERFACE.

IN FACT, THE INTERNAL DOCUMENT SHOWS THAT INTERSIL BELIEVED THAT IT WOULD BE THE FIRST COMPANY TO HAVE THIS ALS WITH AN I-SQUARED C INTERFACE BECAUSE IT HAD NO IDEA THAT TAOS HAD INDEPENDENTLY DEVELOPED ANYTHING AS OF THIS TIME. THIS WAS WELL BEFORE THE MEETING.

THE SAME PRODUCT PROPOSAL SHOWS THAT IT'S ALSO GOING TO FEATURE AN ANALOG TO DIGITAL CONVERTER, RIGHT HERE, FEATURES A 12-BIT ADC AND AN I2C OR I-SQUARED C INTERFACE. PLASTIC PACKAGING. INTERSIL ALWAYS PLANNED TO USE A PLASTIC PACKAGE FOR ITS AMBIENT LIGHT SENSOR. IN FACT, AS YOU HEARD PHIL BENZEL TESTIFY, IT RAN INTO A LOT OF DIFFICULTIES IN TRYING TO MAKE THIS WORK, BUT IT -- IT OVERCAME THOSE DIFFICULTIES AND WAS SUCCESSFUL IN GETTING A PLASTIC PACKAGE FOR ITS AMBIENT LIGHT SENSOR.

SO, THEY CANNOT CLAIM THAT INTERSIL CHANGED

ITS STRATEGY FOR ITS AMBIENT LIGHT SENSOR BASED UPON A MEETING WITH TAOS, BECAUSE THAT STRATEGY WAS IN EXISTENCE AND ALREADY LAID OUT IN FEBRUARY OF '04 LONG BEFORE THEY KNEW ANYTHING ABOUT TAOS'S PACKAGING STRATEGY, AND REMEMBER, THEY NEVER GOT THE COST INFORMATION FOR THOSE NEW GLASS PACKAGED PARTS, NEVER.

THE DUAL-DIODE. WE'VE HEARD SO MUCH ABOUT THE DUAL-DIODE. THE DUAL-DIODE IS CLEARLY COVERED BY THE ASWELL PATENT, ACCORDING TO PLAINTIFFS. IT DISCLOSES TWO DIODES. NOW, THAT'S NOT THE INVENTION, BY THE WAY. THE INVENTION IS NOT A LIGHT DIODE AND A DARK DIODE. IT'S SO MUCH NARROWER THAN THAT. BUT THAT PATENT CERTAINLY DISCLOSES A LIGHT DIODE THAT'S EXPOSED TO INCIDENT LIGHT AND A SHIELDED DIODE THAT IS NOT EXPOSED TO INCIDENT LIGHT AND ONLY RECEIVES INFRARED LIGHT. THAT'S ALL DISCLOSED IN THE PUBLIC IN A PATENT THAT CANNOT BE A TRADE SECRET. AND THAT'S A FUNDAMENTAL DISTINCTION THAT TAOS BLURS THROUGHOUT THE CASE.

LET'S TALK ABOUT AN ARRAY. SO, PRIOR TO THE TIME THAT INTERSIL MET WITH TAOS, IT HAD ACTUALLY FILED FOR A PATENT, AND IT FILED FOR THAT PATENT IN FEBRUARY OF 2003, AND NOW THIS DID NOT ACTUALLY MATURE INTO AN ACTUAL PATENT, BUT IT'S AN -- IT'S AN INTERSIL DOCUMENT, AND IT'S EVEN PUBLIC, AND THE INFORMATION THAT WAS DISCLOSED ON THAT DOCUMENT SHOWED AN ARRAY, AND THIS

ISN'T LIMITED TO A PDIC. THIS ISN'T THAT HONEYCOMB THAT YOU SAW MR. ALIBHAI TALKING ABOUT. THIS IS AN ACTUAL ARRAY, 1:1 ARRAY, OF LIGHT AND DARK DIODES RIGHT THERE. INTERSIL KNEW ALL OF THAT BEFORE THE MEETING.

THE 1:1 RATIO YOU'VE HEARD SO MUCH ABOUT, WELL, THERE IT IS IN THE SAME RUBIN PATENT APPLICATION PUBLICATION, YOU HAVE A 1:1 RATIO, NOT ONLY IN AREA BUT IN NUMBER AS WELL. THAT'S ALL KNOWN TO INTERSIL. THESE ARE THE TECHNICAL TRADE SECRETS THAT THEY HAVE CONTENDED INTERSIL MISAPPROPRIATED. EVERY SINGLE ONE OF THESE WAS KNOWN TO INTERSIL PRIOR TO THE TIME THAT THEY MET WITH TAOS. BECAUSE OF THAT, IT FALLS WITHIN AT LEAST THAT THIRD CATEGORY. MANY OF THESE ARE PUBLIC. SEVERAL OF THESE ARE ALSO KNOWN TO INTERSIL. AND IT'S DOCUMENTED THAT INTERSIL KNEW THEM FROM ITS OWN INTERNAL RECORDS. CANNOT BE CONFIDENTIAL INFORMATION UNDER THE NDA.

SO, AN INTERLEAVED PHOTODIODE ARRAY WITH A 1:1 RATIO WAS WELL KNOWN TO INTERSIL. AGAIN, THIS WAS THE RUBIN APPLICATION. AND BRIAN NORTH TESTIFIED ABOUT THIS. HE SAID, THIS IS ONE OF THE FIRST THINGS HE READ WHEN HE JOINED INTERSIL BECAUSE THE PRODUCT THAT HE WAS SUPPOSED TO BE DEVELOPING AND THAT HE SET OUT TO DEVELOP WAS BASED ON THIS PATENT. SO, HE WAS WELL FAMILIAR WITH IT. HE SAID, THIS PATENT DIRECTLY APPLIES TO THE WORK HE WAS DOING, INCLUDING THE PDIC DEVELOPMENT.

IN FACT, BRIAN NORTH SAID, AND HE TESTIFIED THAT, AS AN OPTICAL ENGINEER, THE ARRAY WAS AN OBVIOUS CHOICE BECAUSE IT WAS, QUOTE, THE SAME CONCEPT AS THE PDIC WE'D BEEN USING. AND AGAIN, HE'S LOOKING AT THIS FROM THE PERSPECTIVE OF A TRAINED OPTICAL ENGINEER OR, AS YOU HEARD, A PERSON OF ORDINARY SKILL IN THE ART, BECAUSE UNLIKE TAOS'S EXPERT, HE ACTUALLY QUALIFIES AS A PERSON OF ORDINARY SKILL IN THE ART.

WHY HAVE AN ARRAY? WELL, THE EL7903, THE NEW PRODUCT THAT WAS COMING OUT, WAS A MUCH LARGER DIE THAN THE 7900, AND THAT ALLOWED ROOM FOR AN ARRAY, AS HE TESTIFIED TO RIGHT HERE AT TRIAL.

TAOS DIDN'T TEACH BRIAN NORTH OR INTERSIL ABOUT AN ARRAY. BECAUSE THE ONLY OTHER PRODUCT THAT BRIAN NORTH WAS WORKING ON AT THAT TIME HAD AN ARRAY OF PHOTODIODES WITH A 1:1 RATIO. HE WAS WORKING ON A LIGHT SENSOR DEVELOPMENT AND A PDIC DEVELOPMENT. HE OBVIOUSLY KNEW ABOUT THE 1:1 ARRAY OF PHOTODIODES FROM HIS PDIC DEVELOPMENT, AND HE TESTIFIED TO THAT FACT.

AND HERE'S THE HONEYCOMB ARRAY THAT WAS PARTICULAR IN THE PDIC DEVELOPMENT. AND AGAIN, THIS SHOWS A 1:1 RATIO IN NUMBER.

NOW, THE IDEA OF THE CHECKERBOARD, THAT WAS PUBLICLY KNOWN. THIS COMES FROM A MUCH EARLIER PATENT, AND YOU HEARD MULTIPLE WITNESSES TESTIFY, A CHECKERBOARD

WAS WELL KNOWN. INTERSIL DOMINATED THIS CHECKERBOARD ARRAY. THIS IS NOT THE TAOS ARRAY AT ALL. IN FACT, THE CHECKERBOARD ARRAY IS STRIKINGLY DIFFERENT FROM THE TAOS ARRAY. THERE'S THE CHECKERBOARD. IT'S ACTUALLY ON A SMALLER DIE THAN THE TAOS PRODUCT. IT'S MUCH LARGER. ONE REASON IT'S MORE EXPENSIVE IS BECAUSE IT USES MORE SILICON SPACE, WHICH IS MORE EXPENSIVE.

THERE IS THE ONLY PICTURE -- THE ONLY DEPICTION THAT ANY OF YOU HAVE OF THE TAOS ARRAY OR THAT INTERSIL HAD OF THE TAOS ARRAY UNTIL IT REVERSE ENGINEERED IT IN JANUARY OF 2006. I ASKED YOU, YOU KNOW, TAOS, ACCORDING TO BRIAN NORTH, DIDN'T DISCLOSE AN ARRAY TO INTERSIL. WAS AN ARRAY DISCLOSED AT THE MEETING? THERE WERE NO ARRAYS MENTIONED. WHAT ABOUT THIS MEETING SLIDE? THE RESOLUTION IS TOO POOR TO TELL THE STRUCTURE OF THE PHOTODIODE. AND THAT'S TRUE. YOU SIMPLY CANNOT TELL ANYTHING FROM THAT PICTURE.

LET ME TALK ABOUT THE CONVENIENT WHITEBOARD. SO, WE DEPOSED MR. LANEY THREE TIMES, THREE DIFFERENT DAYS IN THIS CASE. WE DEPOSED MR. ASWELL, THE INVENTOR. ANOTHER INVENTOR, MR. DIERSCHKE, WE ALSO DEPOSED. AND AT NO TIME DID ANY OF THOSE INDIVIDUALS EVER DISCLOSE THAT THEY CONVEYED INFORMATION TO US ON A WHITEBOARD. BRIAN NORTH WAS ASKED, WERE THERE DRAWINGS ON A WHITEBOARD? I DON'T THINK THERE WAS A

WHITEBOARD -- I THINK THERE WAS A WHITEBOARD, HE SAYS, BUT I DON'T REMEMBER ANYBODY DRAWING ON IT.

NEVER BEFORE HAS THIS BEEN DISCLOSED IN THIS LITIGATION UNTIL WE CAME HERE TODAY AND WE HEARD ABOUT A 1:1 -- AN ARRAY, A 1:1 RATIO SUPPOSEDLY DRAWN ON A WHITEBOARD. THAT LEVEL OF DETAIL WAS NEVER PROVIDED TO US, EITHER AT THE MEETING OR IN THE YEARS OF DISCOVERY LEADING UP TO THIS CASE. IF THIS WAS THEIR CROWN JEWEL, WHY DIDN'T THEY TELL US ABOUT IT? WHY DIDN'T THEY TELL US ABOUT IT?

AND BY THE WAY, WHERE'S MR. ASWELL? UNLIKE THE INTERSIL WITNESSES WHO NO LONGER WORK FOR THE COMPANY, CECIL ASWELL IS STILL EMPLOYED BY TAOS, AND YET, THEY DIDN'T BRING HIM TO TRIAL. HE COULD HAVE TESTIFIED AND BEEN CROSS-EXAMINED ABOUT THIS ALLEGED DISCLOSURE ON THIS WHITEBOARD. IT'S JUST ALL TOO CONVENIENT THAT THE SUPPOSED TRADE SECRET INFORMATION THAT THEY SAY WAS DISCLOSED TO INTERSIL WAS ONLY ON A WHITEBOARD.

INTERSIL'S CHECKERBOARD PHOTODIODE ARRAY, WELL, WHAT DO WE HAVE TO COMPARE THAT TO? HAVE YOU EVER SEEN A DETAILED CLOSE-UP OF THE TAOS ARRAY? THINK BACK OVER THESE MANY DAYS OF TRIAL. DID THEY EVER SHOW YOU WHAT THEIR ARRAY LOOKED LIKE? DID THEY EVER SHOW YOU A CLOSE-UP PICTURE LIKE THIS OF THEIR ARRAY? I CAN TELL

YOU, IT'S NOT A CHECKERBOARD. THE REASON THEY HAVEN'T SHOWN YOU THEIR ARRAY OR A CLOSE-UP PICTURE IS IT'S NOTHING LIKE INTERSIL'S DESIGN. THEY ACTUALLY STOOD UP HERE AND ACCUSED INTERSIL OF STEALING, OF THEFT OF THEIR DESIGN, AND THEY DON'T HAVE THE COURAGE TO SHOW YOU FOR YOURSELVES AND LET YOU COMPARE. WE DON'T HAVE A SINGLE DEPICTION OF THE TAOS ARRAY. THE ONLY THING WE HAVE IS THAT ONE FUZZY SCREEN CAP FROM A POWERPOINT PRESENTATION THAT EVERYBODY AGREES DOESN'T SHOW ANY OF THE DETAILS OF THE ARRAY.

NOW, PHIL BENZEL TESTIFIED ABOUT WHEN THEY FIRST LEARNED ABOUT THE ARRAY, AND PHIL IS VERY IMPORTANT, BECAUSE HE WASN'T THERE AT INTERSIL DURING THE DUE DILIGENCE, BUT HE CAME ON LATER. HE TESTIFIED VERY CLEARLY THAT THERE WAS NO USE AT ANY TIME, NO DISCUSSION OF DUE DILIGENCE INFORMATION BY THE ENGINEERS IN THE OPTICAL DEPARTMENT ON HIS WATCH. IT JUST DIDN'T HAPPEN.

HE SAID, INTERSIL RECEIVED THE REQUEST TO ADD THE ANALOG TO DIGITAL CONVERTER AND THE I-SQUARED C CONTROL FROM SAMSUNG, AND WE SAW EVIDENCE THAT THAT HAPPENED IN 2004 BEFORE INTERSIL EVER MET WITH TAOS. SO, THE IDEAS CAME FROM INTERSIL 'S CUSTOMERS.

BOTH OF THESE CONCEPTS, THE ANALOG TO DIGITAL CONVERTER AND I-SQUARED C WERE WELL KNOWN TO

INTERSIL AND WERE COMMONLY USED. IN FACT, THEY GO BACK DECADES.

INTERSIL DIDN'T COPY THE COMPETITOR. YOU SAW THAT E-MAIL. WELL, PHIL BENZEL TOOK YOU THROUGH IT, AND HE SAID, LOOK, WE WERE ASKING, SHOULD WE MAKE OURS PIN COMPATIBLE SO THAT IT WILL BE EASIER FOR THE CUSTOMER TO SUBSTITUTE OUR CHIP FOR THEIRS? AND AT THE END OF THE DAY, INTERSIL DECIDED THAT ITS CHIP WAS NOT GOING TO BE PIN COMPATIBLE WITH THAT OF TAOS, AND ON THE ISSUE OF THE BITS, INTERSIL USED A 2-BIT INTERRUPT BECAUSE THEY HAD A SMALLER DIE. THEY DIDN'T HAVE THE ROOM FOR ALL THE CIRCUITRY THAT WOULD BE ASSOCIATED WITH A LARGER 4-BIT INTERRUPT. SO, TAOS ALWAYS HAD A 4-BIT. INTERSIL ALWAYS HAD A 2-BIT INTERRUPT.

INTERSIL ENGINEERS NEVER USED ANY TAOS DUE DILIGENCE INFORMATION UNDER HIS WATCH, WHICH BEGAN IN AUGUST OF 2004. INTERSIL'S CYCLE TIME ON THE ISL29001 AND 29003 WAS NOT ACCELERATED. IN FACT, MR. BENZEL SAID HE THOUGHT IT WAS VERY SLOW.

HE ACTUALLY TESTIFIED ABOUT THIS. WHAT WOULD YOUR REACTION BE TO SOMEONE WHO CLAIMED THAT AN ENGINEERING GROUP LIKE THE INTERSIL ENGINEERS IN 2004/2005 COULD NOT HAVE LEGITIMATELY COMPLETED AN AMBIENT LIGHT SENSOR WITH AN ARRAY OF DARK AND LIGHT DIODES IN 53 WEEKS OR LESS? HE SAID, I WOULD BASICALLY

SAY THAT THEY'RE NOT GOING TO BE ABLE TO COMPETE IN THE MARKETPLACE. SO, IF SOMEONE SUGGESTED THAT YOU COULDN'T COMPLETE A CHIP THIS QUICKLY WITHOUT USING STOLEN TRADE SECRET INFORMATION, WHAT WOULD YOU SAY? I'D SAY THAT'S LUDICROUS. AND IF YOU KNOW PHIL BENZEL, THAT'S ABOUT AS STRONG AS HIS LANGUAGE EVER GETS. IT HAPPENS ALL THE TIME. I'VE SEEN CYCLE TIMES AS LOW AS FOUR TO FIVE MONTHS OR FIVE TO 25 WEEKS AT THE MINIMUM FOR DERIVATIVE PRODUCTS.

SO, IN OTHER WORDS, PHIL IS SAYING THAT, LOOK, FOR A NEW PRODUCT, YOU'RE GOING TO HAVE A LONGER CYCLE TIME. FOR A DERIVATIVE PRODUCT, THE TIME CAN BE LESS. IN HIS EXPERIENCE, AS LITTLE AS 5 TO 25 WEEKS.

SO, LET'S LOOK AT THE ACTUAL TIME TO MARKET, BECAUSE THERE IS A DISCREPANCY ON THIS, BUT THERE'S NOT A DISCREPANCY AS TO THE FACTS. SO, INTERSIL FIRST BEGAN DEVELOPING ITS FIRST ALS ON JULY, 2003. THE 7900 DESIGN EVALUATION OCCURRED IN AUGUST OF '03. NOW, THIS IS AN ANALOG PART, BUT IT'S AN AMBIENT LIGHT SENSOR. SAMSUNG REQUESTED NEW FEATURES SUCH AS THE I-SQUARED C AND THE ADC TO BE ADDED TO THE 7900. THOSE WOULD MAKE IT A DIGITAL PART. THAT'S WHY YOU HAVE AN ANALOG TO DIGITAL CONVERTER. THAT MAKES IT INTO A DIGITAL PRODUCT.

SO THE 79003 DESIGN WAS PROPOSED IN

FEBRUARY 11, '04. THAT'S THE DOCUMENT WE'VE ALL SEEN THAT SCOPED IT OUT. SO, IN FEBRUARY OF '04, THAT'S WHEN THE DESIGN OF THE 29001 BEGAN. YOU RECALL THAT ITS NAME CHANGED AS A RESULT OF THE ACQUISITION FROM THE 7903 TO THE 29001.

SO, THE 7900 DESIGN, IN THE MEANTIME, WAS TESTED IN MARCH. THEN IN APRIL, THEY HAD A RE-TAPE-OUT OF THE 7900 DESIGN, AND YOU HEARD MR. BENZEL SAY, THAT'S WHEN YOU SEND EVERYTHING OFF TO THE FAB TO ACTUALLY MAKE IT IN SILICON. SO, THE 7903 DESIGN EVALUATION WAS DONE IN JUNE OF '04. COINCIDENTALLY, IT WAS RIGHT BEFORE THE NDA WAS SIGNED. AND THE FIRST ORDER FOR THE 7900 DIDN'T COME UNTIL MAY OF 2005. SO THIS IS THE FIRST GENERATION, THE ANALOG CHIP, THAT INTERSIL GETS ITS FIRST ORDER FOR THAT IN MAY OF 2005, AND THE DATA SHEET FOR THE 29001, WHICH BEGAN LIFE AS THE 7903, WAS RELEASED ON DECEMBER 21, '05.

LADIES AND GENTLEMEN, THIS IS YOUR DEVELOPMENT TIME, NOT THE MISLEADING FIGURES THAT TAOS HAS TOLD YOU. IT TOOK 22 MONTHS, 89 WEEKS, FROM THE FIRST DESIGN PROPOSAL TO THE DATA SHEET. THEY WANT TO PRETEND THAT INTERSIL HAD TO START OVER FROM SCRATCH WHEN IT ADDED AN ARRAY IN SEPTEMBER. THAT'S JUST SIMPLY NOT TRUE. IT ADDED AN ARRAY. YOU HEARD PHIL BENZEL TESTIFY ABOUT THAT. HE SAID, THAT'S ONE OF THE SIMPLEST

THINGS TO DO. THAT WHEN HE CHANGED THE ARRAY ON THE 29003 FROM CHECKERBOARD TO A MODIFIED CHECKERBOARD, IT TOOK HIM A MATTER OF WEEKS TO MAKE THAT CHANGE. THAT'S A VERY STRAIGHTFORWARD CHANGE.

SO, TAOS HAS MISCHARACTERIZED INTERSIL'S TIME TO MARKET. FOR INTERSIL TO, QUOTE, TURN OUT A NEW CHIP IN SIX, SEVEN MONTHS IS QUITE AN INCREDIBLE FEAT, SAID MR. MCALEXANDER. BUT HE NEVER TOOK YOU THROUGH THE ACTUAL DATES. AND IN FACT, 22 MONTHS FROM ITS COMMENCEMENT, INTERSIL CAME OUT WITH A DATA SHEET FOR THE 29001. 29 MONTHS FROM DEVELOPMENT OF THE ANALOG 7900 IS WHEN IT CAME OUT. THE 29003 WAS 31 MONTHS FROM THE EL7903, IN OTHER WORDS, FROM THE BEGINNING OF THAT DEVELOPMENT. SO, THE SECOND GENERATION CAME OUT 38 MONTHS FROM THE ORIGINAL ANALOG DESIGN.

TAOS, WHEN THEY WERE TALKING ABOUT THEIR DESIGN TIMES, THEY USED THE FILING OF THEIR PATENT AS ONE OF THE INITIAL TIMES FOR THEIR DESIGN. WE NEVER SAW THE ACTUAL DESIGN TIME OF THE TAOS CHIPS FOR COMPARISON, BUT REALLY, IT DOESN'T MATTER, BECAUSE INTERSIL IS USING ITS OWN INFORMATION, ITS OWN KNOWLEDGE THAT IS PROVEN BY ITS OWN DOCUMENTS THAT IT HAD IN ITS POSSESSION BEFORE IT EVER MET WITH TAOS.

SO DR. RICHARD TURNER TALKED A LITTLE BIT ABOUT THIS, AND HE SAID, HE KNOWS THE MARKET, DEALS WITH

THE MARKET EVERY DAY, AND THE MARKET FOR ALS DEVICES IS NOT A TWO-PARTY MARKET. IT IS VERY COMPETITIVE. DEVELOPMENT OF NEW GENERATION ALS DEVICES TAKES SIX TO 12 MONTHS. HE EXPLAINED WHY. PHONE COMPANIES, OTHER COMPANIES ARE ELECTRONICS, TABLETS, ET CETERA. THEY COME OUT WITH A NEW PRODUCT ABOUT EVERY YEAR TO YEAR AND A HALF. IF YOU DON'T COME OUT WITH A NEW UPDATED LIGHT SENSOR ON THAT SAME SCHEDULE, YOU'RE GOING TO FALL BEHIND. SO, ONCE YOUR ON THE TREADMILL, YOU HAVE TO KEEP GOING AND OUTPUTTING NEW PRODUCTS.

IN A DYNAMIC MARKET, PRODUCTS AND PRODUCT PRICES AND COSTS ARE CONSTANTLY CHANGING. OLD INFORMATION GETS STALE VERY QUICKLY. TAOS'S FINANCIAL AND COST INFORMATION FROM 2004 WOULD HAVE HAD ABSOLUTELY NO VALUE TO INTERSIL IN 2007.

NOW, BACK UP FOR A MOMENT HERE WITH ME, LADIES AND GENTLEMEN. REMEMBER, THERE'S NO EVIDENCE THAT ANY FINANCIAL INFORMATION WAS EVER DISCLOSED, DISSEMINATED, DONE ANYTHING IN THE COMPANY AFTER THE PURGE OF THAT INFORMATION IN 2004, ABSOLUTELY NO EVIDENCE. THEY TRY TO GET YOU TO DRAW THE LINES, CONNECT THE DOTS WHEN THERE'S NO EVIDENCE OF IT.

REMEMBER, THE REASON MR. ALIBHAI GETS TO STAND UP AND GO FIRST, THE REASON HE GETS TO GO LAST IS BECAUSE THEY BEAR THE BURDEN OF PROOF. THEY HAVE TO

COME FORWARD WITH EVIDENCE, AND THEY HAVE TURNED OVER EVERY SCRAP OF PAPER, EVERY SCRAP OF DATA AT INTERSIL. YOU'VE SEEN ALL OF THE SCHEMATICS, ALL OF THE SPREADSHEETS, ALL OF THE SOFTWARE ROUTINES FOR EACH OF THESE CHIPS. YOU'VE SEEN THE GDS FILES. THEY HAVE ALL OF THE INFORMATION ON OUR DEVELOPMENT. NOTHING SHOWS ANY USE OF ANY SPREADSHEETS OR COST INFORMATION THAT WAS DISCLOSED IN THE DUE DILIGENCE. THAT WAS USED AT THE TIME ONLY FOR THE DUE DILIGENCE, ONLY TO INVESTIGATE COST SYNERGIES, AND EVEN AT THAT TIME, WE DIDN'T HAVE THE CHIPSCALE PRODUCT PRICING THAT SUPPOSEDLY WE HAD -- WE MADE AN EFFORT TO UNDERCUT.

SO, HISTORIC PRICING AND COSTS ARE TRULY USELESS. IN 1987, I BOUGHT THAT PHONE ON THE LEFT. I PAID OVER $1200. I WAS A BRAND-NEW LAWYER, JUST OUT OF LAW SCHOOL, AND MAN, I NEEDED ONE OF THOSE FANCY CELL PHONES. IT WAS HUGE. IT WAS THIS BIG, VERY HEAVY, AND DIDN'T HAVE MUCH COVERAGE, ALWAYS DROPPING CALLS, BUT I WAS REALLY PROUD TO HAVE ONE.

FAST-FORWARD TO TWO YEARS AGO, I BOUGHT THIS GALAXY S4 FOR $420. THERE'S A WORLD OF DIFFERENCE IN THE FEATURES, AND HISTORIC PRICING AND COSTS ARE USELESS BECAUSE TECHNOLOGY ADVANCES SO QUICKLY AND PRODUCT MARGINS WILL BRING COSTS DOWN, VOLUMES BRING COSTS DOWN. AND IN FACT, YOU CAN SEE THIS. THEIR OWN

ECONOMIC EXPERT CONFIRMED THAT TAOS'S 2004 COSTS WOULD BE USELESS TO INTERSIL IN THE FUTURE. SO, FROM 2005 TO 2011, THERE'S A PRETTY DRAMATIC CHANGE IN COSTS WITH THE 256 SERIES PRODUCTS; IS THAT CORRECT? HE ADMITS, THAT'S TRUE. YOU CAN EVEN EXPLAIN AWAY SOME OF IT. AND HE ACKNOWLEDGES THAT IT GOES DOWN 39 CENTS, 28 TO 20 CENTS, BUT YES, AS YOU PRODUCE MORE, YOU USUALLY HAVE ECONOMIES OF SCALE. YOU GET THE ABILITY TO NEGOTIATE PRICES BETTER ON INPUTS AND A LOT OF TIMES, AS YOU INCREASE PRODUCTION, YOUR COSTS GO DOWN.

SO, WHATEVER VALUE THESE -- THE FINANCIAL INFORMATION MIGHT HAVE HAD TO INTERSIL IN 2004, THEY DIDN'T USE IT, BY THE WAY, TO DO ANYTHING BUT FIGURE OUT THE SYNERGIES BETWEEN THE COMPANIES. BUT EVEN IF YOU SUPPOSE THAT THEY WOULD HAVE USED IT AFTER THAT, IT WOULD HAVE BEEN WORTHLESS TO INTERSIL TO KNOW WHAT HISTORIC PRICES WERE. THAT WOULDN'T TELL YOU HOW YOU COMPETE.

IN FACT, HERE'S THE ACTUAL HISTORIC PRICING FROM DR. UGONE'S INFORMATION. AND WE PUT THAT ON A GRAPH. AND HERE'S WHAT HAPPENED TO THE ALS -- TO TAOS'S COSTS OF THEIR GOODS SOLD FOR THEIR AMBIENT LIGHT SENSORS OVER THIS TIME AS TAKEN DIRECTLY FROM DR. UGONE'S REPORT. IT DROPPED DRAMATICALLY. KNOWING WHAT THESE COSTS WERE HERE IN 2004 DOESN'T TELL YOU

ANYTHING ABOUT WHAT THEY ARE YEARS LATER. JUST LIKE MY CELL PHONE FROM 1987, I COULDN'T PREDICT THE PRICE OF MY CELL PHONE THAT I BOUGHT TWO YEARS AGO BY KNOWING THAT.

ONE THING THAT TAOS AND INTERSIL BOTH AGREE ON IS THAT REVERSE ENGINEERING IS PERMISSIBLE. KIRK LANEY SAID, ABSOLUTELY NOTHING IMPROPER OR ILLEGAL IN ANY WAY ABOUT THAT. TOM TOKOS, THERE WERE NO PROHIBITIONS TO DOING THAT. JOE MCALEXANDER, NO, NOTHING WRONG WITH THAT AT ALL. CECIL ASWELL, I BELIEVE THAT REVERSE ENGINEERING IS PERMITTED. EUGENE DIERSCHKE, THAT'S PROBABLY A LEGITIMATE THING TO DO.

AND IN FACT, TAOS ADMITS THAT IT REVERSE ENGINEERED INTERSIL'S PRODUCTS. LADIES AND GENTLEMEN, THE JUDGE HAS INSTRUCTED, AND YOU KNOW FROM ALL THE WITNESSES' TESTIMONY, REVERSE ENGINEERING IS COMMONLY DONE AND IS PERFECTLY LEGAL. WHAT TAOS DOESN'T DO IS THEY NEVER TAKE THAT INTO ACCOUNT. THEY ACTUALLY CLAIM THAT IT WAS SOME KIND OF A WHITEWASH OR A SHAM, THAT INTERSIL WOULD REVERSE ENGINEER THE TAOS PRODUCT. BUT THAT JUST DOESN'T SQUARE WITH THE FACTS.

I INVITE YOU TO TAKE A CLOSE LOOK AT THIS JANUARY, 2006, MEMO. BECAUSE THERE'S A SENTENCE IN IT THAT ACTUALLY SAYS, "NOW THAT WE KNOW HOW TAOS DOES IT -- "NOW THAT WE KNOW HOW TAOS DOES IT." SO THE INTERSIL ENGINEERS ACTUALLY NOTICED SEVERAL DIFFERENCES

AND EXPRESSED GENUINE SURPRISE AT SOME OF THE THINGS THEY FOUND OUT BY REVERSE ENGINEERING THE TAOS PART.

FIRST OF ALL, THEY SAID, THE TWO MOST NOTICEABLE DIFFERENCES BETWEEN THE TAOS SENSORS AND OUR SENSOR ARE, ONE, TAOS SENSORS ARE LONG, THIN STRIPS OF PIN DIODES, WHEREAS OURS IS A MATRIX OF SQUARE PIN DIODES.

TWO, TAOS DOESN'T USE ANY FILTER COLORS ON THEIR SENSORS, WHEREAS WE USE THE GREEN FILTER. AND THAT, BY THE WAY, WAS A DIFFERENCE IN THE CANCELLATION TECHNIQUES. THE WAY THAT INTERSIL HAD EMPLOYED A CANCELLATION TECHNIQUE TO GET A HUMAN EYE RESPONSE, THEY USED A COLOR FILTER, AND IF YOU LOOK CLOSELY AT BRIAN NORTH'S E-MAIL WHERE HE SAYS, THEY DO IT DIFFERENTLY THAN WHAT WE DO, HE'S NOT TALKING ABOUT THE DIODES. HE GOES ON TO STAY -- IN FACT, LET'S SKIP TO THAT. LET'S GO TO THE SLIDE FROM THE DEFENDANT'S 805. LET'S GO RIGHT TO THAT.

SO, MR. ALIBHAI SHOWED YOU THIS SLIGHT A LITTLE BIT AGO, AND WHAT IT ACTUALLY SAYS HERE -- IT'S SO HARD TO SEE, I APOLOGIZE -- BUT THIS SAYS HERE, WE ARE IMPLEMENTING THE FUNCTION IN A DIFFERENT WAY. AND HE UNDERLINED AND HIGHLIGHTED THAT. LET'S SEE WHAT HE LEFT OUT. HE LEFT OUT THE PART THAT SAYS, "THE TAOS APPROACH HAS THE FOLLOWING ADVANTAGE. CAN USE NONSENSOR

CMOS PROCESS, NO COLOR FILTER NECESSARY." SO, INTERSIL HAD IMPLEMENTED A HUMAN EYE RESPONSE USING A GREEN COLOR FILTER. TAOS WAS ABLE TO USE A DIFFERENT CMOS PROCESS BECAUSE IT DIDN'T USE A GREEN COLOR FILTER ON ITS PRODUCT. THAT'S ONE OF THE THINGS THAT THEY THOUGHT WAS PRETTY NEAT. THAT WAS THE THING THAT BRIAN NORTH GOES ON TO EXPLAIN IS DIFFERENT.

HE DOESN'T SAY THAT THEY HAVE A DUAL-DIODE APPROACH THAT WE DON'T HAVE. THAT'S WHAT THEY WANT YOU TO READ INTO THIS. THEY DON'T WANT YOU TO READ THE REST OF THE E-MAIL WHERE HE NOTES THAT THE DIFFERENCE IS THE ABSENCE OF A GREEN COLOR FILTER.

LET'S GO BACK TO THE REVERSE ENGINEERING SLIDE. SO THEN THE TEAM DISCUSSED THEIR CENTRAL ARCHITECTURE AND WHETHER CHANGES SHOULD BE MADE TO BETTER ATTAIN THE IR, AND THEY GO INTO DETAIL BELOW. THEY SAY NOW THAT WE KNOW HOW TAOS DOES IT, DO WE INCORPORATE LONG STRIP SENSORS LIKE TAOS, OR DO WE MODIFY OUR MATRIX SENSOR APPROACH? THEY REALIZED THAT THERE WAS SOMETHING ABOUT THE SPACING OF THE DIODES THAT ACTUALLY WAS ALLOWING TAOS TO GET A BETTER IR RESPONSE.

THIS IS IN JANUARY OF '06. REMEMBER THAT THEY HAD ALREADY SUBMITTED INFORMATION, AND THEY HAD ALREADY SEEN THAT THEIR PRODUCT WAS NOT DOING WELL, THE 29001, AND THEY WERE REDESIGNING THAT INTO THE 29003.

SO, WHAT DID THEY DO? AS PHIL BENZEL TESTIFIED, HE SAID, "INTERSIL DID NOT KNOW THE STRUCTURE OF THE TAOS PHOTODIODE ARRAY UNTIL AFTER IT REVERSE ENGINEERED THE TAOS PART IN 2006." LADIES AND GENTLEMEN, WHY WOULD THEY BE REVERSE ENGINEERING THE TAOS PART IN JANUARY OF 2006 IF THEY ALREADY KNEW THIS BACK IN '04? JUST DOESN'T MAKE SENSE. WOULDN'T EVER HAPPEN.

THEY LEARNED ABOUT THIS LONG, NARROW STRIPS USED BY TAOS AND THAT TAOS DID NOT USE COLORED FILTERS. THEY DIDN'T EVEN KNOW THAT TAOS DIDN'T USE COLORED FILTERS. THEY COULD NOT INCORPORATE THE TAOS LONG NARROW STRIPS OF PHOTODIODES WITHOUT A COMPLETE REDESIGN, AND THAT'S BECAUSE THE ARRAY THAT TAOS USES IS ACTUALLY LONGER THAN THE DIE THAT INTERSIL USES. YOU COULDN'T PUT IT ON THERE.

BUT THEY DECIDED THAT THEY WOULD MAKE THEIR PATTERN AND THEIR CHECKERBOARD THINNER TO HELP CANCEL IR. HE ALSO NOTED THAT IT WOULD GET RID OF ANOTHER PROBLEM. SO THEY WERE HAVING PROBLEMS WITH THE -- THAT TAOS WOULD NEVER HAVE. TAOS USED GLASS. INTERSIL USED A PLASTIC EPOXY AT THE TOP OF THEIR CHIP, SO THEY GOT BUBBLES IN THE PLASTIC, AND THOSE BUBBLES SOMETIMES WOULD PREVENT THE LIGHT FROM COMING INTO THE DIODE. SO BY MAKING MORE SENSORS, BY INCREASING THE NUMBER OF

SENSORS, THEY WERE ABLE TO AVERAGE OUT THE ERRORS AND ALLEVIATE THE PROBLEMS ASSOCIATED WITH BUBBLES. SO THOSE WERE TWO REASONS THEY CHANGED IT.

AND HE SAID HE REVIEWED THE PATENT, BUT HE COULDN'T DISCLOSE THAT IN MARCH 2010. YOU KNOW WHY? BECAUSE DAVID FOGG HAD DONE HIS WORK, AND THAT WAS STILL PRIVILEGED. UNDER THE RULES THAT THE COURT ADOPTED, THEY SET A DEADLINE FOR INTERSIL TO DISCLOSE WHETHER OR NOT IT WAS GOING TO CLAIM PRIVILEGE ON DAVID FOGG, AND WE FOLLOWED THAT DEADLINE. SO, AT THIS TIME, HE WAS NOT FREE TO DISCLOSE THAT, AND HE DIDN'T. HE WASN'T LYING. HE NEVER LIED. HE WAS FOLLOWING HIS COUNSEL'S INSTRUCTIONS.

IN FACT, YOU SAW MR. BENZEL ON THE STAND. HE ACTUALLY STARTED TO TELL MORE ABOUT WHAT HE HAD DISCUSSED WITH HIS LAWYERS, AND THE JUDGE -- JUDGE SCHELL STOPPED HIM AND SAID, OH, DON'T TELL US WHAT YOUR LAWYERS SAID. HE UNDERSTOOD THAT IN 2010, AND THAT'S WHY NO DISCLOSURE WAS MADE AT THAT TIME.

BUT DR. PHIL HOBBS ANALYZES THIS. HE SAYS, REVERSE ENGINEERING A CHIP COSTS TENS OF THOUSANDS OF DOLLARS, WHICH IS A WASTE OF MONEY IF YOU ALREADY KNOW THE ANSWER. WASTE OF MONEY. IF INTERSIL WAS TRYING TO COVER ITS TRACKS, WHY WOULD INTERSIL WAIT 16 MONTHS BEFORE DOING THE REVERSE ENGINEERING? THIS PRODUCT HAD

BEEN OUT ON THE MARKET A WHILE BEFORE INTERSIL PURCHASED IT AND REVERSE ENGINEERED IT.

THE CONTEMPORANEOUS DOCUMENTS SHOW GENUINE SURPRISE BY INTERSIL'S ENGINEERS, AND THEY DO. GENUINE SURPRISE. REMEMBER, THIS IS BEFORE THEY RECEIVED ANY E-MAIL FROM MR. LANEY COMPLAINING ABOUT THE COMMON USE OR HOW SUPPOSEDLY THE INTERSIL PRODUCT MIRRORED THEIR FEATURES. THIS IS BEFORE THAT. THEY'RE NOT TRYING TO COVER THEIR TRACKS. THEY'RE LEARNING ABOUT IT FOR THE FIRST TIME. AND WHAT DID THEY DO? THEY CHANGED THEIR CHECKERBOARD PATTERN BASED ON THE LAWFUL INFORMATION THEY OBTAINED IN REVERSE ENGINEERING. THEY MADE A CHANGE. YOU DON'T WANT TO HEAR TAOS TALK ABOUT THIS BECAUSE IT WAS DONE DIRECTLY IN RESPONSE TO THE REVERSE ENGINEERING.

LADIES AND GENTLEMEN, THEY CANNOT OBTAIN DAMAGES FOR USE OF INFORMATION FROM LAWFUL REVERSE ENGINEERING. THIS WAS DONE IN JANUARY, 2006, AND THE CHANGE THAT WAS MADE, IT WENT FROM THE CHECKERBOARD PATTERN, AND THEY TOOK EACH LITTLE SQUARE AND DIVIDED IT UP INTO FOURS, AND THEY GOT THIS MODIFIED CHECKERBOARD PATTERN, AND THAT WAS THE CHANGE THAT WAS MADE TO THE ARRAY.

AGAIN, AN ARRAY IS A SIMPLE THING TO ADD. SIMPLE THING TO CHANGE HERE. AND YOU SAW MR. BENZEL

TESTIFY TO THIS FACT.

NOW, THEY DIDN'T STOP THERE. THEY WERE TRYING TO GET THE BEST INFRARED CANCELLATION. THEY HAD BEEN EXPERIMENTING ALL ALONG WITH MANY TECHNIQUES. YOU HEARD MR. BENZEL SAY, WE TRIED IR REJECTING GLASS. SO THEY ACTUALLY TRIED TO GLUE A PIECE OF GLASS THAT WAS COVERED WITH AN INFRARED REJECTION FILM ON TO THEIR PLASTIC PARTS. MISERABLE FAILURE, DIDN'T WORK WELL. THEY COULDN'T MAKE THAT WORK.

THEY TRIED DIFFERENT COLOR FILTER COMBINATIONS, AND YOU SAW THIS. MR. BENZEL TOOK YOU THROUGH THE INTERSIL EXPERIMENTS WITH COLOR FILTERS. SO, HERE IS THE DEVICE THAT TAOS WANTS TO TELL YOU MIMICKED AND COPIED THE TAOS IR REJECTION. WELL, MR. BENZEL POINTED OUT THAT THIS IN THE WAY THAT INTERSIL IMPLEMENTED IT DIDN'T REJECT ANY IR. THIS HAD HORRIBLE IR REJECTION, JUST LIKE THE ANALOG PART, JUST LIKE THE ANALOG PART.

LADIES AND GENTLEMEN, IF INTERSIL STOLE THE IR REJECTION TECHNIQUE FROM TAOS, THEN WHY DID THIS PART NOT REJECT IR? THIS IS THE ACTUAL GRAPH THAT SHOWS WHAT HAPPENED IN THIS CASE. VIRTUALLY NO IR REJECTION. AND THEY -- THEY TRIED ANOTHER EXPERIMENT. THE SECOND TIME, THEY COVERED IT, DIODE 2, WITH A RED FILTER. THIS, BECAUSE OF THE RED FILTER, YOU KNOW, IT -- IT DID WIPE

OUT A LOT OF THE INFRARED, BUT UNFORTUNATELY, IT ALSO TOOK OUT A LOT OF THE RED LIGHT, SO IT INTERFERED WITH THE HUMAN EYE RESPONSE AS WELL. SO, THIS SOLUTION DIDN'T WORK EITHER.

BUT INTERSIL EXPERIMENTED WITH COLOR FILTERS. INTERESTINGLY, ONLY AFTER THIS LAWSUIT WAS FILED AND INTERSIL WAS BASICALLY DRIVEN FROM THE MARKET, GUESS WHO STARTED USING COLOR FILTERS? IN FACT, ONE OF THE MOST IMPORTANT EXPERIMENTS THAT INTERSIL DID IS THEY DEVELOPED A TECHNIQUE FOR STACKING FILTERS. VERY DIFFICULT WHEN YOU'RE USING THESE PROCESSES TO PUT ONE PLASTIC FILTER ON TOP OF ANOTHER IN A VERY, VERY SMALL MICROSCOPIC DIODE. BUT THEY FIGURED OUT THAT IF THEY STACKED THE RED FILTER ON THE GREEN FILTER THAT YOU WOULD GET A DARK BROWN TO BLACK FILTER AND YOU COULD USE THAT INSTEAD OF THE SHIELDED DIODE, AND IF YOU DID THAT, YOU GOT TREMENDOUS IR REJECTION, TREMENDOUS, BECAUSE THIS WOULD FILTER OUT ALL THE INFRARED.

IN FACT, INTERSIL ALSO, AS YOU KNOW, DEVELOPED ITS OWN PLASTIC PACKAGE, AND IT TOOK A WHILE TO PROTOTYPE THAT. YOU SAW THE SCHEDULE TO DO THAT, BUT IT WAS ACTUALLY DONE IN PROTOTYPE BEFORE THEY EVER MET WITH TAOS AND THIS WAS AN OPTICAL DFN PACKAGE, SO INTERSIL DEVELOPED ITS OWN OPTICAL PACKAGE, MADE IT COST EFFECTIVE. IN CONTRAST, THEY USED A GLASS PACKAGE,

LARGER CHIP, WAS IN CHIPSCALE PACKAGE, AND BECAUSE THE HIGHER SILICON COST AND IT'S A MORE EXPENSIVE PACKAGE, THEIRS JUST COSTS MORE. IT JUST DOES. AND SO AS A RESULT THERE WAS A DIFFERENCE IN PRICE. THAT WASN'T INTERSIL MISUSING TAOS INFORMATION. THAT WAS JUST A FUNDAMENTAL DIFFERENCE IN THE COST OF MANUFACTURING WITH GLASS VERSUS PLASTIC.

CECIL ASWELL WAS ASKED ABOUT THIS. HE SAID -- AND THIS IS THE SAME CECIL ASWELL THAT DIDN'T COME TO TRIAL, DID NOT PROVIDE TRADE SECRET INFORMATION ABOUT PACKAGING. THAT'S WHAT HE TESTIFIED TO. IN THE DUE DILIGENCE PERIOD, NO TRADE SECRET INFORMATION ABOUT PACKAGING.

HE SAYS, THERE ARE NUMEROUS DIFFERENCES BETWEEN INTERSIL'S AND TAOS'S SENSORS. AND INTERESTINGLY, HE SAID APPLE REQUESTED A PROXIMITY SENSING CAPABILITY IN 2008, WHICH TAOS DIDN'T HAVE. HE'S ALSO THE LEAD NAMED INVENTOR ON THE PATENT. HE DIDN'T EVEN BOTHER TO COME TO TRIAL. WHY NOT? BECAUSE HIS TESTIMONY WOULD NOT HAVE BEEN HELPFUL ON ANY OF THE ISSUES.

SO, MR. LANEY ADMITS THAT WHEN APPLE REQUESTED PROXIMITY SENSING CAPABILITY IN 2008, TAOS DIDN'T HAVE A COMBINATION PRODUCT. IN FACT, ONE OF THE REASONS THAT APPLE CHOSE INTERSIL WAS THE PRICE, A

DIFFERENCE OF 35 CENTS VERSUS 59 CENTS FOR THE TAOS PART. BUT ALSO, DUE TO FUTURE INTEGRATION WITH THE TRANSMIT SIZE OF THE PROXIMITY SENSOR, AND IN FACT, TAOS REALIZED AT THAT TIME THAT IT HAD FALLEN BEHIND INTERSIL, INTERSIL CAME OUT WITH A SINGLE OUTPUT DIGITAL SENSOR, CHEAP AS THE 2903. THEY HAVE IT ALL.

AND TODD BISHOP, INTERNAL TAOS ENGINEER, ACTUALLY SUMMED IT UP PRETTY NICELY. AND THEY WENT ON TO SAY THAT BASED ON THIS, IT SEEMS TO ME THAT WE ARE ABOUT OUT OF THE WIDEBAND ALS BUSINESS. THEY WERE VERY CONCERNED. AND IN FACT, INTERSIL DID COME OUT ON NOVEMBER 12TH, 2008, WITH ITS COMBINATION AMBIENT LIGHT SENSOR AND PROXIMITY SENSOR.

NOW, REMEMBER, APPLE DIDN'T ULTIMATELY DECIDE TO GO WITH THIS LATER, BUT THIS IS WHAT THEY WERE EXPRESSING AT THE TIME THAT THEY WANTED. THEY TOLD BOTH TAOS AND INTERSIL THEY WERE INTERESTED IN THE COMBINATION PROXIMITY AND ALS.

SO, WHAT HAPPENED? THIS COMES OUT. IT'S CIRCULATED WITHIN TAOS. TWO WEEKS LATER, THIS LAWSUIT IS FILED. LADIES AND GENTLEMEN, THIS SHOWS SOME OF THE PROBLEMS HERE WITH THE MISUSE THAT HAS GONE ON. THIS SHOWS THE UNCLEAN HANDS THAT TAOS HAS IN BRINGING THIS PATENT SUIT. IN FACT, THE ONLY EVIDENCE OF ACTUAL MISUSE OF INFORMATION PROVIDED UNDER THE NDA THAT EXISTS

IN THIS CASE IS THAT TAOS MISUSED IT. THEY SAID THEY TALKED WITH INTERSIL UNDER THE NDA, AND THEY TOLD US WHO THEY WERE USING FOR PACKAGING, AND ONE OF THE VENDORS WAS CHIPPAC, SO INFORMATION THAT INTERSIL GAVE TO TAOS UNDER THE NDA, AT SOME POINT, THEY HAD CHECKED UP ON THAT.

THIS IS WELL AFTER THE TIME OF THE DUE DILIGENCE. THEY STILL HAD THE INFORMATION, AND THEY WERE USING IT IN VIOLATION OF THE NONDISCLOSURE AGREEMENT. THIS IS ALSO A MATERIAL BREACH, AND YOU HEARD THE JUDGE'S INSTRUCTIONS. FOR ANY BREACHES THAT ARE ALLEGED TO HAVE OCCURRED AFTER THIS POINT IN TIME -- AND WE'RE NOT SURE EXACTLY WHEN THIS BREACH OCCURRED -- BUT THE E-MAIL IS DATED JANUARY 6, 2006, INTERESTINGLY, ABOUT THE SAME TIME THAT INTERSIL WAS REVERSE ENGINEERING THE TAOS PART.

SO, AFTER JANUARY, '06, YOU CAN CHOOSE TO DISREGARD ANY POTENTIAL DAMAGES EITHER FOR BREACH OF TRADE SECRETS THAT WOULD HAVE BEEN DISCLOSED BY THE REVERSE ENGINEERING, OR FOR BREACH OF CONTRACT BECAUSE OF THE PRIOR MATERIAL BREACH.

SO, FOR TORTIOUS INTERFERENCE, THERE'S NO CAUSATION, NO TESTIMONY FROM APPLE THAT APPLE WOULD HAVE PAID THAT 59 CENT PRICE. IN FACT, TAOS HAD A PLASTIC PART. WHAT DID LANEY DO? HE BLAMED APPLE. HE DIDN'T

BLAME INTERSIL. HE BLAMED APPLE FOR NOT TELLING HIM THAT THEY WANTED A PLASTIC PACKAGED PART. THE REASON HE DIDN'T OFFER THIS TO APPLE WAS BECAUSE THEY HAD HIGHER MARGINS THAT THEY WERE GETTING FROM NOKIA. THEY DIDN'T WANT TO LOSE ALL THE -- THE GRAVY MONEY THAT THEY WERE GETTING FROM NOKIA, WHICH WOULD HAVE HAPPENED IF THEY HAD SOLD A PLASTIC PACKAGED PART TO APPLE.

AND APPLE HAD A PREFERENCE TO GET TAOS OUT. NOW, THERE IS EVIDENCE THAT APPLE DROPPED INTERSIL BECAUSE OF THE LAWSUIT. DAVID CRAIG SAID, NOKIA AND APPLE BOTH BEAT THE TAR OUT OF TAOS ON PRICES. SO, THERE'S NO EVIDENCE THAT THEY WOULD HAVE GOTTEN THEIR 59 CENT PRICE HAD INTERSIL NOT BEEN IN THE PICTURE.

TAOS HAD CAPACITY PROBLEMS IN 2008. NOW, KIRK LANEY DENIES THAT, BUT DAVID CRAIG HAS SINCE PASSED AWAY, UNFORTUNATELY. I THINK HE'D BE ASHAMED OF THE FACT THAT EVEN THOUGH HE WAS IN CHARGE OF FINANCING THAT KIRK LANEY HAS COME TO COURT AND COMPLETELY CONTRADICTED WHAT HE PREVIOUSLY SAID UNDER OATH.

NOW, TRADE SECRETS ARE DIFFERENT THAN PATENTS. TRADE SECRETS ARE PROTECTED BECAUSE THEY ARE SECRET. PATENTED INVENTIONS ARE PROTECTED BECAUSE THEY ARE PUBLIC. JOE MCALEXANDER NOTED THAT HE DIDN'T DETERMINE THE DEFAULT MODE OF ANY OF INTERSIL'S ALS'S. HE ADMITTED THAT MODE3 IS ONLY CONFIGURED BY AN OFF CHIP

COMMAND. WHY IS THIS CRITICAL? BECAUSE INFRINGEMENT MUST BE MONOLITHIC, ACCORDING TO THE COURT'S INSTRUCTIONS. YOU'LL SEE THAT. THAT MEANS IT ALL HAS TO OCCUR ON THE SAME SUBSTRATE. PART OF THE INFRINGEMENT CANNOT COME FROM OFF THE CHIP, BUT THAT'S EXACTLY WHAT HAPPENS.

HE ALSO DOESN'T SHOW, EVER, HOW SUBTRACTION OF VALUES YIELDS AN INDICATION OF SPECTRAL CONTENT. REMEMBER, THE PATENT ISN'T ONLY ON SENSING AMBIENT LIGHT. THE PATENT REQUIRES THAT YOU GET AN INDICATION OF SPECTRAL CONTENT FROM A COMPARISON. IN OTHER WORDS, YOU LEARN SOMETHING ABOUT THE WAVELENGTH OF A LIGHT.

HE ACTUALLY ATTEMPTS TO DEFINE INFRINGEMENT BY READING ABOUT THE DATA SHEETS, WHICH TAOS ADMITS ARE JUST MARKETING MATERIAL. HE DOESN'T READ IT ON THE ACTUAL PRODUCTS. SO, WHAT WENT WRONG HERE IN HIS ANALYSIS? FIRST OF ALL, HE IS NOT QUALIFIED. HE LACKS OPTICAL EXPERIENCE. A PERSON OF ORDINARY SKILL IN THIS DISCIPLINE, ACCORDING TO MR. LANEY HIMSELF, WOULD HAVE FIVE YEARS OR MORE OF EXPERIENCE IN THE FIELD OF OPTICAL LIGHT SENSING.

WELL, BRUCE BUCKMAN CERTAINLY HAS THAT. HE SAID THAT INTERSIL SENSORS CANNOT DETERMINE AN INDICATION OF SPECTRAL CONTENT BECAUSE IT DOESN'T PROVIDE WAVELENGTH INFORMATION. MCALEXANDER'S TESTIMONY

ABOUT SIMPLE SUBTRACTION ACTUALLY CONFLICTS WITH WHAT THE INVENTORS SAID.

MR. MCALEXANDER NEVER EXPLAINED HOW SUBTRACTION YIELDS AN INDICATION OF SPECTRAL CONTENT. HE SAID ONLY, WELL, IT'S ARITHMETIC. BUT IT MUST DETERMINE INFORMATION ABOUT THE SPECTRAL CONTENT, I.E., THE WAVELENGTHS. SUBTRACTION ONLY PROVIDES AN APPROXIMATION OF THE AMOUNT OF LIGHT. DR. BUCKMAN DEMONSTRATED THAT BY SHOWING THAT TWO SOURCES OF LIGHT DO HAVE THE SAME RESULT EVEN THOUGH THEY HAVE DIFFERENT SPECTRAL CONTENT IN THE MERE SUBTRACTION. THIS DOESN'T INFRINGE.

INVENTOR CECIL ASWELL SAID, AND HOW EXACTLY WOULD YOU DETERMINE WAVELENGTH USING A SUBTRACTION METHOD? YOU DO NOT DETERMINE WAVELENGTH USING THE SUBTRACTION METHOD. HE ADMITS THAT INTERSIL'S PRODUCTS DON'T INFRINGE BECAUSE THEY DON'T DETERMINE WAVELENGTH OF SUBTRACTION.

GENE -- EUGENE DIERSCHKE WAS ASKED, WHAT WOULD BE DIFFERENT IF YOU JUST SUBTRACTED THOSE VALUES INSTEAD OF MEASURED A RATIO? HE GOES ON TO SAY, THEREFORE, YOU CAN'T DO A DIRECT SUBTRACTION BECAUSE OF THE FACT THAT IT'S THE SECOND N-WELL. IT DOES NOT EXACTLY REPRODUCE THE IR THAT'S DETECTED BY THE FIRST WELL, EXACTLY WHAT DR. BUCKMAN SAID.

MR. MCALEXANDER SAYS ONLY THAT, WELL, IT'S AN ARITHMETIC PROCESS. ONE'S AS GOOD AS ANOTHER.

PHIL BENZEL NOTED THAT INTERSIL'S MODE3 DOESN'T OPERATE UNLESS IT'S RECONFIGURED FROM A COMMAND FROM AN OFF CHIP CONTROLLER. NONE OF INTERSIL'S CUSTOMERS EVER USED MODE3 IN ANY OF THEIR PRODUCTS. THIS IS WHY INTERSIL WAS CONFIDENT THAT IT WAS NOT INFRINGING THE TAOS PATENT, BECAUSE NO CUSTOMER EVER USED MODE3 EVER. INTERSIL NEVER TESTED ANY OF ITS CHIPS IN MODE3. IN FACT, THE TEST MODE, WHICH MR. MCALEXANDER DIDN'T EVEN REVIEW, ACTUALLY DISCONNECTS THE CURRENT FROM THE PHOTODIODES WHEN IT'S GOING INTO TEST. SO, MODE3, ACCORDING TO SPECIFICATIONS DONE IN -- BEFORE -- THIS IS BEFORE THE CHIP WAS EVER BUILT, SAY THAT MODE3 IS ONLY ENABLED VIA THE MICROCONTROLLER.

NOW, THIS IS IMPORTANT. MR. ALIBHAI DIDN'T TAKE YOU THROUGH THE COURT'S CLAIM CONSTRUCTION. YOU REMEMBER THERE'S SOMETHING CALLED A MEANS-PLUS-FUNCTION CLAIM, AND THE COURT HAS ALREADY DEFINED THAT THE STRUCTURE OF THAT CLAIM IS PROCESSING AND CONTROL UNIT 46 OF FIGURE 3 AND ITS EQUIVALENTS. THEY NEVER TOOK YOU THROUGH THIS ANALYSIS. THE REASON IS THAT THIS PROCESSING AND CONTROL UNIT HAS A CONTROL FUNCTION RIGHT THERE, AND THAT CONTROL FUNCTION MUST BE ON THE CHIP. SO THERE MUST BE A COMMAND ON THE CHIP THAT CONTROLS THE

ANALOG-TO-DIGITAL CONVERTER AND THE MUX.

AND MCALEXANDER AGREED THAT THAT IS OFF THE CHIP. HE ADMITTED THAT IN MODE3, IT CANNOT OPERATE UNLESS IT RECEIVES A SIGNAL, A COMMAND FROM AN OFF CHIP MASTER. SO, THERE HAS TO BE A SEPARATE MICROCONTROLLER TO SEND THE SIGNAL. THIS CHIP CANNOT INFRINGE. IT'S IMPOSSIBLE FOR IT TO INFRINGE BECAUSE ALL THE FEATURES THAT ARE REQUIRED FOR INFRINGEMENT ARE NOT ON THE CHIP. AND THIS ISN'T BY ACCIDENT; THIS IS HOW IT'S DESIGNED, BUT NOBODY CARES BECAUSE NOBODY USES THIS MODE. NO ONE.

LUX EQUATIONS, THOSE ARE WRITTEN. THOSE ARE DEVELOPED. HE ADMITTED THE DETERMINING STEP IS SOMEBODY WRITING DOWN INFORMATION. IT'S NOT BEING PERFORMED BY A CHIP. IT'S BEING PERFORMED BY A CALCULATOR AND A COMPUTER AND AN ENGINEER. THAT'S NOT INFRINGEMENT, CERTAINLY NOT MONOLITHIC.

TESTING, NEVER USED MODE3, UNDISPUTED. AND MOST OF THE TESTING WASN'T EVEN DONE IN THE UNITED STATES.

SO, TAOS'S DAMAGES. I HATE TO TALK ABOUT THIS, BUT I HAVE A FEW MINUTES LEFT. AND IF WE GET TO DAMAGES -- IF YOU GET TO START FILLING IN THOSE BLANKS EXCEPT FOR THE NOMINAL ONES, IT MEANS THAT AT SOME POINT, I WILL HAVE FAILED IN MY MISSION TO CONVINCE TO YOU THAT INTERSIL NEVER STOLE ANY TAOS TRADE SECRETS.

THEY NEVER MISAPPROPRIATED INFORMATION. THEY DON'T INFRINGE THE PATENT. BUT IF YOU GET TO THESE, YOU AT LEAST SHOULD DO IT PROPERLY. AND YOU DON'T HAVE THAT GUIDANCE.

REMEMBER, THE HYPOTHETICAL NEGOTIATION FOR ROYALTY, IT BEGINS IN 2006, BUT THEY WANT YOU TO USE A PROFIT DECREASE THAT DIDN'T HAPPEN UNTIL 2009. IT'S IMPROPER. NO ECONOMIC SENSE AT ALL.

FOR THE TRADE SECRET CONTRACT DAMAGES, THEY FAILED TO ACCOUNT FOR NUMEROUS FACTORS. THE TRADE SECRETS WERE DISCLOSED IN 2007, BUT THEY HAVE LESS COMMERCIAL VALUE IN 2006, '7, '8, '9, '10. DO THEY HAVE THE SAME COMMERCIAL VALUE LAST YEAR AS 10 YEARS BEFORE WHEN THEY WERE DISCLOSED? OF COURSE NOT. BUT THEY MAKE NO ACCOUNT FOR THIS, NONE WHATSOEVER.

INTERSIL REVERSE ENGINEERED TAOS'S CHIPS IN 2006, EARLY 2006. THEY CANNOT HAVE MISAPPROPRIATED ANYTHING THAT WAS DISCLOSED IN THE CHIP.

THE NDA EXPIRED BY ITS TERMS IN JUNE OF 2007. THE COURT'S INSTRUCTED YOU FOR ANY BREACHES THAT OCCUR AFTER THAT POINT, THERE ARE NO DAMAGES, BUT THEY DON'T REDUCE THAT FROM THEIR CALCULATION. THIS IS CRITICAL. LOST PROFITS. TAOS COULDN'T OR WOULDN'T MAKE THE SALE BECAUSE THEY REFUSED TO GIVE THEIR PLASTIC PACKAGING TO APPLE. NOW, GUESS WHAT THE IPHONE 3GS

USED? IT USED A PLASTIC PACKAGED CHIP.

ONLY AFTER TAOS GOT THE WAKE-UP CALL -- THEY WERE SUPPOSEDLY BLINDSIDED, ALTHOUGH WE SAW LOTS OF EVIDENCE THAT WASN'T TRUE, BUT AT THAT POINT, THEY OFFERED A PLASTIC PACKAGE CHIP TO APPLE, AND THAT'S WHAT APPLE PURCHASED. THEY WANT TO MAKE YOU BELIEVE THAT THEY PURCHASED THE SAME THING FOR THE IPHONE 3 THAT THEY HAD PURCHASED FOR THE IPHONE 1. IT'S JUST NOT TRUE. APPLE PURCHASED A PLASTIC PACKAGED CHIP. THEY PAID LESS FOR IT, MUCH LESS, AND THEY CAN'T GET LOST PROFITS ON A CHIP THAT APPLE WOULDN'T HAVE BOUGHT FOR THE IPHONE 2. THEY WOULD HAVE INSISTED ON A PLASTIC PACKAGED CHIP.

APPLE WANTED TAOS OUT IN 2007/2008. THERE'S NO DISPUTE ABOUT THAT. TAOS REFUSED TO LOWER ITS PRICES FOR APPLE BECAUSE IT WAS MAKING THE SAME PROFIT ON NOKIA ON THE SAME PART. TAOS LACKED CAPACITY FOR PRODUCTION AT THAT TIME. AND THIS REQUIRES NET PROFITS. UGONE, DR. UGONE DIDN'T APPLY NET PROFITS. HE USED GROSS.

TAOS'S ROYALTY DAMAGES WERE OVERSTATED. THEY FAILED TO APPORTION. REMEMBER MR. RATLIFF'S PIE CHART? THEY DIDN'T APPORTION FOR PREEXISTING TECHNOLOGY. WHAT ABOUT THE PACKAGING TECHNOLOGY THAT WAS DIFFERENT? THEY DIDN'T APPORTION FOR THAT. INTERSIL'S R&D, THE DIFFERENCE BETWEEN THE PATENT VALUE

AND THE TRADE SECRETS, 50/50. THAT'S WHAT MR. RATLIFF SUGGESTED. THEY WANT YOU TO APPLY 100/100 AND GIVE THEM 200 PERCENT. THEY WANT A ROYALTY BOTH FOR THE TRADE SECRET VALUE AND THE PATENT VALUE.

THEY ASK FOR A 10 CENT PROFIT. WELL, FIRST OF ALL, 18 COMPETITORS ARE CHARGING LOWER PRICES AND USING PLASTIC PACKAGES. INTERSIL WAS ONLY A 5 TO 15 PERCENT MARKET PARTICIPANT. THEY IGNORE THEIR OWN LICENSE WITH AVAGO WHICH HAS A 3.5 CENT ROYALTY. THEY IGNORE THEIR OWN INTERNAL COMMUNICATIONS ABOUT 5 CENT ROYALTY AND THE FACT THAT 500,000 FOR ALL THEIR PATENTS AND LICENSES WAS A RECENT VALUATION.

THEY'RE ASKING FOR 27 PERCENT OF THE ACTUAL SALES PRICE. REMEMBER, THESE ONLY GO UP TO 35 CENTS. THEY'RE ASKING FOR 10 CENTS OF THAT TO BE PAID TO THEM FOR A ROYALTY, FOR USING A -- A PATENT THAT ONLY OPERATES IN A MODE THAT NO CUSTOMER USES. THAT DEFIES LOGIC. THAT IS GROSSLY OVERSTATING.

THE COURT: MR. BRAGALONE, YOU HAVE TWO MINUTES.

MR. BRAGALONE: THANK YOU, YOUR HONOR.

SO, TAOS WAS FIXATED ON MAINTAINING THESE PRICES, AS WE'VE SEEN, BECAUSE IT WOULD HAVE HURT THEIR MARGINS WITH NOKIA, BECAUSE THEY USED THE SAME CONTRACT MANUFACTURER AS APPLE AND THEY WOULD HAVE FOUND OUT.

SO, THE TRADE SECRET DAMAGES WOULD BE -- AGAIN, THEY DON'T APPORTION ANYTHING, THEY DON'T SHOW WHAT TRADE SECRETS WERE USED AND THEY FAIL TO LIMIT THEIR DAMAGES BASED ON REVERSE ENGINEERING OR EXPIRATION OF THE NDA. THEY USE GROSS PROFITS AND NOT INCREMENTAL ONES.

SO, WHAT ARE THE DAMAGES? 15,000 FOR PATENT DAMAGES IF YOU FIND LIABILITY. NONPATENT DAMAGES, 3.7 MILLION. BUT THIS IS IMPORTANT. ACCORDING TO EXHIBIT 300A, FIRST OF ALL, KIRK LANEY INSISTED ON THE THREE-YEAR TERM, AND HE HAS CALCULATED IF YOU CUT OFF THE DAMAGES, AS YOU SHOULD WHEN THE NDA EXPIRES, THE DISGORGEMENT DAMAGES ARE 115,000. THE ROYALTY DAMAGES ARE 53,000. THAT'S IN EXHIBIT 300A.

THE PATENT IS INVALID. WE'VE GONE OVER THE QUICK REFERENCE IN THE '981 REFERENCE. I'LL INVITE YOU TO READ THOSE, BUT THEY ACTUALLY DO USE INCIDENT LIGHT, THE SAME TERM AS THE PATENT.

BOTH TAOS AND INTERSIL WANT TO BEAT THE COMPETITION. YOU'VE SEEN E-MAILS FROM INTERSIL ABOUT PUTTING A NAIL IN THE COFFIN, BUT WHAT ABOUT THIS E-MAIL FROM KIRK LANEY OF TAOS? HE SAYS HE WANTS TO BRAINSTORM AND RALLY AROUND A COMPREHENSIVE PLAN TO CRUSH INTERSIL, ROHM, AND CAPELLA. BOTH PARTIES WANT TO COMPETE AND WANT TO COMPETE AGGRESSIVELY. THERE'S NOTHING IMPROPER

ABOUT THAT. HE SAYS HE WANTS TO CRUSH INTERSIL, WE WANT TO DRIVE A NAIL IN THEIR COFFIN. IT'S COMPETITIVE JARGON.

BUT TAOS POISONED THE MARKET WITH THEIR LITIGATION THREATS. YOU RECALL THIS. TWO YEARS BEFORE THEY EVER FILED SUIT, THEY WERE ACCUSING INTERSIL OF INFRINGEMENT.

AND FINALLY, THEY ULTIMATELY PUBLICIZED THE LAWSUIT AS YOU RECALL FROM MY OPENING, WHICH CAUSED INTERSIL'S SALES TO PLUMMET AFTER THAT INFORMATION WAS DISCLOSED.

YOUR HONOR, I HAVE 30 SECONDS. TAOS BROUGHT -- BOUGHT AUSTRIA MICROSYSTEMS, WAS BOUGHT BY THEM, AND YOU HEARD MR. MAHESWARAN SAY, WHY IS THIS SUIT EVEN BEING BROUGHT? BECAUSE INTERSIL DIDN'T BUY TAOS. AS A RESULT, TAOS GOT EQUITY FINANCING, AND THEY WERE ABLE, YEARS LATER, TO CASH OUT HANDSOMELY. THEY RECEIVED, JUST SHAREHOLDERS ALONE, $300 MILLION, HALF IN STOCK AND HALF IN CASH DUE TO THIS ACQUISITION. THEY'RE NOT THE SMALL GUY ON THE BLOCK ANYMORE.

WE ASK, FINALLY, LADIES AND GENTLEMEN, THAT YOU NOT ADD FURTHER INJURY TO THE INSULT, THAT YOU NOT GIVE THEM A FURTHER WINDFALL IN THIS CASE AND THAT YOU RETURN A VERDICT OF NO INFRINGEMENT, NO TRADE SECRET MISAPPROPRIATION, AND NO LIABILITY ON BREACH OF CONTRACT

OR TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACT. THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION. I HAVE TO SIT DOWN NOW, AND I HAVE TO LISTEN, AND I WILL BE GRIMACING AS TAOS GETS THE LAST WORD. I DON'T HAVE ANOTHER OPPORTUNITY TO SPEAK TO YOU, BUT I WANT TO THANK YOU SO MUCH FOR YOUR TIME AND ATTENTION THROUGHOUT THIS TRIAL.

THE COURT: THANK YOU, MR. BRAGALONE.

MR. ALIBHAI, I'LL ADD 2 MINUTES TO YOUR TIME, SO YOU HAVE 26 MINUTES.

LADIES AND GENTLEMEN, IF YOU WANT TO KEEP GOING FOR 26 MINUTES OR DO YOU WANT TO TAKE A BREAK? WE CAN TAKE A BREAK IF YOU WANT. KEEP GOING? OKAY.

MR. ALIBHAI: YOUR HONOR?

THE COURT: MR. ALIBHAI.

MR. ALIBHAI: I'M GOING TO START WITH THE CLAIMS THAT WE'RE TALKING ABOUT AND -- TALK ABOUT THE CLAIMS. I'M GOING TO START WITH PATENT INFRINGEMENT BECAUSE HE JUST RUSHED THROUGH THAT AT THE VERY END THERE.

JOE MCALEXANDER LOOKED AT THE TAOS AND INTERSIL PRODUCTS, TOOK AN APPLE IPHONE 3G APART, AND LOOKED AT THAT PRODUCT THAT WAS IN THERE, WHICH WAS THE INTERSIL 29003, TESTED THAT PRODUCT, SHOWED YOU PICTURES OF THAT PRODUCT, SHOWED YOU CROSS-SECTIONS OF THAT

PRODUCT, SHOWED YOU HOW THAT PRODUCT WORKED IN THAT DEVICE, AND SHOWED YOU HOW IT INFRINGED AND WENT THROUGH STEP BY STEP THE INFRINGEMENT OF EACH OF THE ASSERTED CLAIMS.

AND THE ONLY THING THAT THEY CAN SAY APPEARED IS, WELL, WE'RE NOT AWARE OF CUSTOMERS USING MODE3. THE MORE IMPORTANT QUESTION IS, AS MR. BENZEL TESTIFIED TO, WHY DOES EVERY SINGLE ONE OF THESE ACCUSED PRODUCTS HAVE, YOU KNOW, A 3? WHY DO THEY SELL 88 MILLION ACCUSED PRODUCTS, THE 29001, '02, '03, '04, WITH A MODE3? WHY DO THEY ADVERTISE THAT WHEN YOU DO D1 MINUS D2 YOU GET IR CANCELLATION AND YOU GET A HUMAN EYE RESPONSE?

IT INFRINGES THE PATENT. IT INFRINGES ALL SIX CLAIMS OF THE PATENT. AND WITH RESPECT TO THAT INFRINGEMENT, IT WAS DONE TO TRY TO GET SALES. REMEMBER THAT MR. NORTH WAS ASSIGNED TO THE PDIC PROGRAM, AND THAT'S WHAT MR. MAHESWARAN SAID HE WANTED TO BUY TAOS FOR, WAS PDIC'S. WHAT HAPPENS AFTER THEY MEET US AND BEFORE MR. NORTH LEAVES? DO THEY EVER FINISH A PDIC? NO. DO THEY START SELLING AMBIENT LIGHT SENSORS? 172 MILLION OF THEM. 88 MILLION THAT INFRINGE THE PATENT.

SO WE KNOW THEY SET OUT ON A COURSE OF ACTION AFTER MEETING US AND DECIDED NOT WILLING TO PAY WHAT TAOS IS WORTH, WE'LL JUST GO AHEAD AND MAKE THE

PRODUCTS THEY SELL. SO, LET'S TALK ABOUT SOME OF THE POINTS THAT ARE IMPORTANT TO, AGAIN, LOOKING AT THESE FOUR CAUSES OF ACTION. THEY SPENT 20, 25 MINUTES TALKING ABOUT THESE OFFERS THAT SAY, DRAFT. A SECOND ONE THAT THERE'S NOT EVEN A DOCUMENT SHOWING THAT IT WAS SENT TO TAOS.

ALL RIGHT. LET'S SAY THEY DID OFFER $45 MILLION. FOR WHAT? AN INVALID PATENT AND PUBLICLY AVAILABLE INFORMATION? THAT'S WHAT YOU'RE SUPPOSED TO BELIEVE? ALL YOU HAVE TO DO, HIS HONOR SAID, IS USE YOUR COMMON SENSE. COMMON SENSE. INTERSIL WORTH A HUNDRED -- $950 MILLION, IT'S GOING TO SPEND $45 MILLION FOR WHAT? SOMETHING IT ALREADY HAD? PUBLICLY AVAILABLE INFORMATION? PATENTS THAT ARE INVALID? HIGH LEVEL TECHNICAL INFORMATION? THAT DOESN'T MAKE SENSE.

LET'S LOOK AT ID 987. THEY WANT YOU TO DETERMINE THAT THEY HAD THIS TECHNOLOGY, AND IF THAT'S TRUE, ASK THESE FOUR QUESTIONS. NUMBER ONE, MR. MAHESWARAN SAID, YOU DON'T BUY PRODUCTS YOU ALREADY DON'T HAVE -- YOU DON'T BUY PRODUCTS YOU ALREADY HAVE. HE SAID, THEY WERE BUYING TAOS FOR TECHNOLOGY, KNOW-HOW, AND THEIR PRODUCTS.

NUMBER TWO, THEY GO TO THE BOARD OF DIRECTORS. HE SAID, THERE ARE BILLIONAIRES SITTING ON OUR BOARD. THAT'S WHAT MR. MAHESWARAN SAID. HE WENT TO

THOSE PEOPLE AND SAID, WE WANT TO SPEND 35 TO $45 MILLION OF OUR MONEY. FOR WHAT? FOR TECHNOLOGY THAT THEY THOUGHT WAS VALUABLE. THERE IS NOT A SINGLE DOCUMENT, AND YOU WILL HAVE THE RIGHT AND THE OPPORTUNITY TO REVIEW ALL 300 OF PLAINTIFF'S EXHIBITS AND ALL 500 OF DEFENDANT'S EXHIBITS, AND IF YOU WANT TO HAVE SOME FUN, LOOK THROUGH THOSE 500 EXHIBITS AND LOOK FOR ONE DOCUMENT ABOUT DESIGNING AN AMBIENT LIGHT SENSOR THAT REFERENCES THIS RUBIN PATENT APPLICATION THAT NEVER BECAME A PATENT.

ONE, DON'T YOU THINK YOU WOULD HAVE SEEN IT TODAY IF IT WAS IN THAT BOX OF 500? DON'T YOU THINK MR. BRAGALONE WOULD HAVE SHOWN YOU THAT DOCUMENT OF ALL THE DOCUMENTS IN THE WORLD? TO STAND UP HERE TODAY IN 2015 AND GO, WELL, THERE'S THIS PATENT CALLED KUIJK AND THERE'S THIS PATENT APPLICATION CALLED RUBIN, AND THERE'S STUFF OUT THERE ABOUT I-SQUARED C, SHOW ME. SHOW ME ANYWHERE WHERE SOMEONE CAME UP WITH THE WORLD'S FIRST DIGITAL AMBIENT LIGHT SENSOR THAT USED A DUAL-DIODE APPROACH. I'LL SHOW YOU. YOU DON'T HAVE TO GET REAL FAR IN PLAINTIFF'S EXHIBITS. PLAINTIFF'S EXHIBIT 1 -- IN FACT, YOU'LL RECEIVE A COPY OF IT -- THAT'S THE WORLD 'S FIRST DIGITAL DUAL-DIODE AMBIENT LIGHT SENSOR. IT'S PATENTED BY DR. DIERSCHKE AND BY TAOS.

THEN WHAT HAPPENS? THESE GUYS THAT HAVE A HUNDRED-PLUS YEARS IN OPTOELECTRONICS, AND THEY WANT YOU TO MAGICALLY BELIEVE THAT RANDOMLY, SOMEHOW, ONE NIGHT, BETWEEN JUNE WHEN HE DOES DUE DILIGENCE AND AUGUST 30TH, BRIAN NORTH WAKES UP AND HAS THE IDEA TO DO ALL THE THINGS HE HAD NEVER DONE BEFORE.

CAN I USE THE BOARD AGAIN, YOUR HONOR?

THE COURT: YES.

MR. ALIBHAI: THANK YOU. I ASKED HIM -- I WENT THROUGH IT WITH HIM. I SAID, AUGUST 31, 2004, YOU SIT THERE AT A DESIGN REVIEW AND YOU PUT IN ALL THESE FEATURES. AND PRIOR TO TAOS, DID YOU HAVE ANY OF THOSE FEATURES? LOOK AT THE DESIGN REVIEW DOCUMENTS OF INTERSIL'S. THEY DIDN'T USE AN INTERLEAVED PHOTODIODE ARRAY IN AN AMBIENT LIGHT SENSOR. THEY DIDN'T USE MULTIPLE CELLS. THEY HAD THIS ONE BIG DIODE. DO YOU KNOW WHAT THE SECOND ONE'S CALLED? DUMMY DIODE.

THEY DIDN'T HAVE A 1:1 RATIO IN AREA. THEY DIDN'T HAVE EXPOSED AND SHIELDED DUAL-DIODE APPROACH. AND IT CERTAINLY DIDN'T DO IR REJECTION. WHEN THEIR EXPERT COMES HERE AND TELLS YOU IT DOESN'T DO IR REJECTION AND DR. LIN, WHO'S INVOLVED IN DESIGN, SAYS IT DOESN'T DO IR REJECTION, WE KNOW IT DOESN'T DO IR REJECTION.

THEY DIDN'T HAVE IT BEFORE THEY MET US.

THAT'S THE ISSUE YOU HAVE TO DECIDE. DID THEY HAVE IT? BECAUSE MR. TOKOS WROTE TO KIRK LANEY AND SAID, WE DEVELOPED THIS BEFORE WE MET YOU. IT IS YOUR JOB AS THE FINDERS OF FACT TO SEE IF THAT STATEMENT WAS TRUE. IF THAT STATEMENT IS NOT TRUE, IF YOU FIND THAT THEY DID NOT HAVE AN AMBIENT LIGHT SENSOR THAT HAD THESE FEATURES, THEN YOU KNOW THAT THEY MISAPPROPRIATED TAOS'S TRADE SECRETS AND THEY USED TAOS'S CONFIDENTIAL INFORMATION TO DEVELOP THEIR LINE OF AMBIENT LIGHT SENSORS.

LET'S LOOK AT ID 607, PLEASE. THIS SAYS THAT YOU CAN USE THE INFORMATION FOR ONE REASON, FOR THE PURPOSE OF EVALUATING THE BUSINESS AND FINANCIAL CONDITION OF TAOS. IT DOES NOT SAY YOU CAN USE IT TO DEVELOP A COMPETING LINE OF AMBIENT LIGHT SENSORS. IT DOES NOT SAY THAT YOU CAN USE OUR FINANCIALS TO SELL TO OUR CUSTOMER AND COMPETE WITH US. IT DOES NOT SAY, YOU CAN USE TECHNICAL INFORMATION ABOUT OUR PRODUCT THAT WE DISCLOSE TO YOU BECAUSE WE TRUST THAT YOU'RE GOING TO KEEP IT IN CONFIDENCE AND COME UP WITH YOUR OWN PRODUCTS THAT USE THOSE SAME FEATURES. IT DOESN'T SAY THAT. AND YOU CAN READ THIS DOCUMENT, PLAINTIFF'S EXHIBIT 62, AND THAT'S THE DEFINITION OF PERMITTED USE. IT DOESN'T SAY YOU CAN DO ANY OF THE THINGS THAT THEY DID.

AND YOU WANT TO SEE EVIDENCE OF THEM USING

OUR INFORMATION? IT IS RARE THAT SOMEBODY STEALS SOMETHING AND THEN ADMITS TO IT.

CAN YOU PUT UP ID 900 PLEASE?

MR. MAHESWARAN WALKED INTO THIS COURT, SAT RIGHT THERE, SWORE UNDER OATH THAT HE WAS PROVIDED INFORMATION THAT WAS CONFIDENTIAL. WHEN THEY STAND UP HERE AND TELL YOU NOTHING WAS CONFIDENTIAL, NOTHING WAS A TRADE SECRET, MR. MAHESWARAN TESTIFIED, UNDER OATH, CONFIDENTIAL INFORMATION. "AND THE USE OF THAT INFORMATION WAS FOR PURPOSE OF CONSIDERING AN ACQUISITION OF TAOS, CORRECT?" "THAT'S CORRECT." WHAT'S HE SAY NEXT? "AND YOU TESTIFIED TO TODAY WAS THAT INTERSIL DID A MAKE VERSUS BUY ANALYSIS USING THAT INFORMATION; ISN'T THAT CORRECT?"

"THAT'S CORRECT. UH-HUH."

HE ADMITTED THAT THEY BREACHED THIS CONTRACT, THAT THEY USED THE CONFIDENTIAL INFORMATION FOR THEIR PURPOSES, TO DO THEIR BUILD VERSUS BUY OR MAKE VERSUS BUILD ANALYSIS. THAT IS NOT A PERMITTED USE UNDER THAT AGREEMENT, AND THAT IS HARD EVIDENCE. FOR SOMEONE TO STAND UP HERE UNDER OATH AND SAY, YEP, WE DIDN'T LIVE UP TO OUR WORD, WE SAID WE'D USE IT FOR THAT PURPOSE, AND WE USED IT FOR A DIFFERENT ONE.

NOW, LET'S TALK ABOUT THE FINANCIAL TRADE SECRETS.

ID 894, PLEASE.

AND WE TALK ABOUT TAOS'S PRODUCTS, THIS UNRELEASED PRODUCT THAT WE DISCUSSED WITH THEM. WE SHOWED THEM CONFIDENTIAL INFORMATION ABOUT THAT. AND IF WE LOOK AT ID 668, PLEASE. WHAT I TOLD YOU HAD HAPPENED IS EXACTLY WHAT HAPPENED. I TOLD YOU THAT THERE'S A MONSTER SPREADSHEET THAT'S 300 PAGES LONG AND THAT THEY'RE GOING TO STAND UP HERE AND THEY'RE GOING TO SHOW YOU THE BLANK SPREADSHEET THAT HAD BLANK TABS. ISN'T THAT WHAT HAPPENED? DID THEY SHOW YOU THE MONSTER SPREADSHEET?

BACK TO KINDERGARTEN. CAN YOU MATCH THINGS UP JUST TO SHOW THAT THE THINGS ARE BEING USED? IF YOU TAKE THEIR E-MAIL, WHICH IS JULY 6TH, THIS IS AFTER THE COUNTEROFFER'S BEEN MADE, AFTER THEY SAY, WHOA, 70 MILLION? PUT IT ON HOLD. LET'S LOOK AT IT OURSELVES. AND JULY 4TH, WHILE FIREWORKS ARE GOING OFF AND EVERYONE ELSE IS WATCHING FIREWORKS, MR. LAHRI'S SAYING, OH, LET'S LOOK AT WHAT HAPPENED WITH TAOS. LET'S LOOK AT WHAT INFORMATION THEY HAVE. THIS IS A RESPONSE TO HIS E-MAIL ON JULY 4TH, AND ON JULY 6TH, THEY ARE COPYING INFORMATION FROM OUR MONSTER SPREADSHEET ABOUT OUR PRODUCTS AND SHOWING THEM AND DISCUSSING THEM TO DISCUSS WHAT THE MARGINS WERE. WHY? BECAUSE THEY WANT TO KNOW IF IT'S PROFITABLE FOR THEM TO GET INTO THIS BUSINESS.

THEY'RE NOT IN THIS BUSINESS. THEY'RE DECIDING WHETHER TO GET INTO THIS BUSINESS LOOKING AT OUR FINANCIAL DATA.

THAT'S NOT HOW YOU MAKE THAT DECISION. YOU DON'T GET CONFIDENTIAL INFORMATION OF TAOS TO MAKE A DECISION TO GET INTO THE BUSINESS, BUT THAT'S EXACTLY WHAT THEY DID. AND MR. MCCABE SHOWED YOU HOW THOSE COLUMNS LINE UP WITH THE INFORMATION IN THE E-MAIL. WHY IS THAT INFORMATION IN THAT E-MAIL AT ALL? IT SHOULDN'T HAVE BEEN DISCUSSED.

NOW LET'S TALK ABOUT THE TECHNICAL TRADE SECRETS.

CAN WE LOOK AT PLAINTIFF'S EXHIBIT 65, PLEASE? MAYBE WE CAN ZOOM IN ON THE TOP PART A LITTLE FIRST.

THIS IS THE E-MAIL FROM MR. NORTH RESPONDING TO COMMENTS FROM THE MEETING WE TALKED ABOUT. AND HE SAYS, WE'VE IMPLEMENTED THE FUNCTION IN A DIFFERENT WAY. CAN WE LOOK AT A DIFFERENT PART OF IT?

"THEIR PORTFOLIO IS EXACTLY THE SAME GROUP OF PRODUCTS THAT I WOULD SUGGEST WE BUILD. THEY HAVE A SIGNIFICANT JUMP START. IT WOULD TAKE ABOUT A MAN-YEAR OF DESIGN TO REPLICATE ALL OF THE MORE INTERESTING ITEMS." AND HE TESTIFIED THAT THE MORE INTERESTING ITEMS WERE THE AMBIENT LIGHT SENSORS. IT WOULD TAKE A MAN-YEAR OF DESIGN TO REPLICATE THEM. HOW LONG DID IT

TAKE BRIAN NORTH? THE TIME LINE DOESN'T LIE. YOU CAN LOOK AT THAT TIME LINE THAT I SHOWED YOU EARLIER. I BELIEVE THAT'S -- IS IT 803-01, PLEASE?

IT IS AUGUST 31ST. HE'S WRITING THAT E-MAIL IN JUNE. HE'S SAYING IT WOULD TAKE A MAN-YEAR. BY AUGUST, HE'S REDESIGNED THE PRODUCT, AND HE'S GOT OUR DESIGN MAP. HE'S USING ALL THE FEATURES THAT WE'VE TAUGHT HIM ABOUT OUR PRODUCT. NOW, MAYBE THE CHECKERBOARD LOOKS DIFFERENT THAN THE RECTANGULAR STRIPS, BUT IT'S GOT ALL THOSE FEATURES. IT'S GOT THE INTERLEAVING, IT'S GOT THE 1:1 RATIO, IT'S GOT THE ALTERNATING LIGHT AND DARK DIODES. IT USES THE DUAL-DIODE APPROACH. IT USES MANY CELLS. IT HAS ALL THE SAME FEATURES.

HE DID THAT IN A COUPLE OF WEEKS, NOT A MAN-YEAR, AND YOU DON'T HAVE TO TAKE MY WORD FOR IT. THEY SAID THEY WENT TO APPLE AND THAT THEY WOULD HAVE THOSE PRODUCTS TO THEM IN A MONTH. SO, THAT'S A FIVE-MONTH -- IT DIDN'T TAKE THEM A YEAR. BUT THEY REPLICATED IT, AND THEY SAID THAT WE SHOULD REPLICATE IT.

AND WITH RESPECT TO THIS IDEA THAT SOMEHOW HIS KNOWLEDGE AND PDIC'S TOLD HIM THIS, ONCE AGAIN, AS MR. MCCABE ASKED YOU, HE HAD THAT KNOWLEDGE SINCE 2003. HE SAID HE READ THAT PATENT APPLICATION WHEN HE FIRST

JOINED. NOTICE THAT HE WAS VERY CAREFUL WITH HIS WORDS, AND YOU CAN ASK -- READ HIS TESTIMONY. HE DID NOT SAY, I RELIED ON IT. I USED IT. I COPIED IT FROM THE RUBIN PATENT APPLICATION. HE SAID, I READ IT. I KNEW ABOUT IT. HE KNEW ABOUT IT SINCE 2003, BUT IT'S ONLY AFTER TAOS TEACHES HIM THAT HE DECIDES TO IMPLEMENT THAT IN THE AMBIENT LIGHT SENSORS.

MR. LANEY TESTIFIED THAT THIS INFORMATION WAS A TRADE SECRET AND THAT THIS INFORMATION WAS DISCLOSED TO INTERSIL. "DID YOU CONSIDER WHAT HE WAS DESCRIBING TO BE THE METHOD BY WHICH YOU WOULD MAXIMIZE YOUR INFRARED CANCELLATION TECHNIQUE?" "YES." "DID YOU CONSIDER THE DESCRIPTION THAT PROVIDED THE STRATEGY TO MOVE FROM THE FIRST GENERATION TO THE SECOND GENERATION AMBIENT LIGHT SENSOR?" "YES."

HE TALKS ABOUT HOW DURING THOSE MEETINGS THEY DISCLOSED INFORMATION, AND HE EVEN TALKS ABOUT HOW THIS WAS DISCLOSED IN DEPTH. AND HE WAS ASKED, WHO DID THAT? MR. ASWELL. AND HOW DID HE PHYSICALLY DO THAT? HE'S -- HE'S VERY GOOD IN FRONT OF A WHITEBOARD.

FOR THEM TO COME HERE TODAY AND STAND UP AND CLAIM THAT DR. DIERSCHKE IS SOMEHOW LYING ABOUT SEEING A PICTURE DRAWN ON A WHITEBOARD, HE STOOD RIGHT HERE IN FRONT OF YOU AND DREW ON THE BACK OF A WHITEBOARD, AND HE TESTIFIED, UNDER OATH, THAT'S THE

SAME DRAWING THAT WAS DONE BEFORE. MR. ASWELL TESTIFIED -- MR. LANEY TESTIFIED THAT HE ALSO SAW THAT HAPPEN, WAS AT THAT MEETING, AND DISCLOSED THAT THEY WERE CHANGING TO IMPROVE THE IR CANCELLATION TECHNIQUE IN THEIR PRODUCTS.

DR. TURNER TESTIFIED THAT THIS IS INFORMATION THAT WOULD BE CONSIDERED A TRADE SECRET. "IF YOU CONSIDERED INTERSIL A COMPETITOR, WOULD YOU HAVE DISCLOSED THAT INFORMATION TO THEM?" "NO, I WOULD NOT." THIS IS MR. LANEY. "DID YOU CONSIDER THAT CHANGE IN THE PHOTODIODE STRUCTURE TO BE ONE OF TAOS'S TRADE SECRETS?" "WE DID, YES."

IT'S NOT A RELEASED PRODUCT. OF COURSE IT'S A TRADE SECRET. SO THERE'S EVIDENCE THAT THEY USED OUR CONFIDENTIAL INFORMATION. MR. MAHESWARAN ADMITTED TO THAT RIGHT HERE. THERE SHOULD BE NO DOUBT THAT THEY RECEIVED CONFIDENTIAL INFORMATION AND THAT THEY USED IT IMPROPERLY IN VIOLATION OF THE PERMITTED USE, THAT THEY USED OUR FINANCIAL INFORMATION AND THAT THEY USED OUR TECHNICAL INFORMATION TO GIVE THEMSELVES A HEAD START.

NOW, THEY TALK ABOUT THIS REVERSE ENGINEERING. IT'S ON THIS TIME LINE. WE KNEW THEY'D TALK ABOUT IT. JANUARY 26, 2006, WHAT'S ALREADY HAPPENED BY THEN? NUMBER ONE, THEY'VE ALREADY GONE TO APPLE WITH THE 29001 PART. NUMBER TWO, THEY'VE ALREADY

RELEASED THE 29001 DATA SHEET. NUMBER THREE, THEY'VE ALREADY RELEASED THE 29003 DATA SHEET. AND HOW'D THEY KNOW TO GO REVERSE ENGINEER OUR PRODUCT? WHY DIDN'T THEY GO REVERSE ENGINEER ONE OF THESE CAPELLA PRODUCTS THAT WE READ ABOUT IT? WHY'D THEY PICK THE 2560 TO REVERSE ENGINEER? BECAUSE THEY KNEW.

AND IF THEY CLAIM, OH, WELL, WHY ARE PEOPLE TALKING ABOUT IT NOW? BRIAN NORTH'S LEFT THE COMPANY IN 2005. THE ONLY GUY WHO WAS INVOLVED IN THE DUE DILIGENCE FROM AN ENGINEERING STANDPOINT WAS BRIAN NORTH. HE LEAVES IN 2005, CHANGES THE STRUCTURE AND LEAVES.

THEN IN 2006, DR. LIN AND MR. BENZEL ARE SITTING AROUND AND GOING, OH, WHAT SHOULD WE DO ABOUT THIS NOW? WELL, LET'S REVERSE ENGINEER ONE OF THE PRODUCTS WE'VE BEEN TRYING TO COPY ALL THIS TIME ANYWAY. THE PRODUCT THEY CHOSE IS TELLING. THE PRODUCT THEY CHOSE IS EVIDENCE THAT THEY USED CONFIDENTIAL INFORMATION THAT THEY'D ACQUIRED WHO THEY'D BEEN COMPETING WITH AND PICKED THAT PRODUCT SO THEY COULD WALK IN HERE AND GO, OH, WELL, WE REVERSE ENGINEERED IT. YOU'D ALREADY RELEASED YOUR PRODUCTS. YOU'D ALREADY DONE THE BAD ACTS. YOU'D ALREADY LIED, CHEATED, AND STOLEN BEFORE YOU WENT AND REVERSE ENGINEERED.

NOW, WITH RESPECT TO THE DAMAGES THAT HAVE

BEEN CAUSED, THEY LAUNCHED AN ENTIRE LINE OF AMBIENT LIGHT SENSORS. 29001, '2, '3, AND '4 ARE ALL RELEASED BEFORE ANY REVERSE ENGINEERING, AND ALL FROM THIS CHANGE IN DESIGN IN 2004 AND 2005. AND THEN, THEY CONTINUE TO LAUNCH PRODUCTS, THE '6, '8, THE '10, '12, THE '13, ALL USING A DUAL-DIODE APPROACH WHERE ONE DIODE IS SUBJECT TO VISIBLE LIGHT AND INFRARED, AND THE SECOND ONE IS SENSITIVE MOSTLY TO INFRARED.

THEIR ENTIRE PROGRAM WAS BASED UPON OUR TRADE SECRETS AND OUR TECHNOLOGY. THAT'S UP FOR YOU TO DECIDE. HOW DID THEY GET THOSE 172 MILLION UNITS THERE SHOULD BE A ROYALTY OWED? BUT WHEN YOU THINK ABOUT THE ROYALTY, I THINK IT'S PRETTY CLEAR THAT WHEN MR. RATLIFF TESTIFIES TO 1.7 CENTS, THAT THAT'S A LITTLE LOW. THAT TAOS, IF THEY WERE SITTING DOWN WITH INTERSIL, AND THEY TURNED DOWN 30 MILLION, AND THEY TURNED DOWN 42 OR 45 MILLION WOULD SAY, YOU KNOW WHAT, YOU'RE 50 TIMES BIGGER THAN US, WE'RE LOSING MONEY, WE'LL TAKE A PENNY AND A HALF AND YOU GUYS GO SELL THIS STUFF. THAT MAKES NO SENSE.

TAOS, FIRST OF ALL, WOULDN'T HAVE WANTED THE LICENSE. IT ALREADY SAID NO WHEN RICK FURTNEY SUGGESTED IT, BUT EVEN IF IT WERE FORCED -- BECAUSE THERE'S THIS FORCED HYPOTHETICAL NEGOTIATION -- IT WOULD HAVE ASKED FOR EVERY PENNY OF PROFIT IT COULD HAVE ASKED

FOR. THEY MADE $49 MILLION SELLING THOSE AMBIENT LIGHT SENSORS. THAT $49 MILLION WAS MADE BY USING SOMEBODY ELSE'S INFORMATION, BASED ON COPYING SOMEBODY ELSE'S HARD WORK. A HUNDRED YEARS OF HARD WORK IN OPTOELECTRONICS. AND THEY WANT TO SAY, YOU KNOW WHAT? WE'LL KEEP 49, GIVE THEM 3, WE'LL HAVE 46 LEFT OVER, IT'S ALL GOOD. WILL THAT MAKE THINGS RIGHT? DID WE REALLY SIT THROUGH A FOUR-WEEK TRIAL SO THAT THEY COULD KEEP $46 MILLION IN PROFIT AND PAY TAOS 3 MILLION AND SAY, IT'S ALL RIGHT, WE ALMOST PUT YOU OUT OF BUSINESS?

WHAT YOU HEARD TODAY WERE A LOT OF EXCUSES, AND YOU'VE HEARD EXCUSES FOR FOUR, AND I TRIED TO JOT DOWN SOME OF THE THINGS THAT I HEARD, BUT IT'S UP TO YOU TO DECIDE WHAT TYPES OF THINGS THEY SAID THAT DON'T MAKE A LOT OF SENSE. TAOS GAVE INTERSIL TOO MUCH INFORMATION. HOW ELSE ARE YOU SUPPOSED TO DO DUE DILIGENCE? YOU WANT TO SELL ME YOUR CAR? CAN'T DRIVE IT, CAN'T LOOK UNDER THE HOOD. JUST BUY IT. OF COURSE NOT. DUE DILIGENCE MEANS EXCHANGING INFORMATION. THERE'S AN AGREEMENT.

IS TAOS TO BE BLAMED FOR RELYING ON A CONFIDENTIALITY AGREEMENT THAT INTERSIL SIGNED? KIRK LANEY WAS GREEDY. KIRK LANEY VALUED THE COMPANY THE WAY THAT IT WAS SUPPOSED TO BE VALUED. WHO WAS RIGHT? WAS THE COMPANY WORTH 30 MILLION OR WAS IT WORTH CLOSER TO

70? BECAUSE A FEW YEARS LATER, IT SOLD FOR 300 MILLION. WHO HAD THE VALUATION OF THE COMPANY RIGHT? WHO WAS RIGHT THAT THESE AMBIENT LIGHT SENSORS WOULD TAKE OFF, THAT EVERYONE WOULD BE CARRYING AN APPLE IPHONE OR A SAMSUNG GALAXY PHONE THAT HAD AN AMBIENT LIGHT SENSOR IN IT?

THEY SAID THAT BREACHING THE AGREEMENT WAS A MISTAKE? YOU ARE INSTRUCTED AS A MATTER OF LAW THE DEFENDANT RETAINED CONFIDENTIAL INFORMATION IN BREACH OF THE AGREEMENT. AND YOU ARE LATER INSTRUCTED ON PAGE 9, A MATERIAL BREACH OF ONE ASPECT OF THE CONTRACT GENERALLY CONSTITUTES THE MATERIAL BREACH OF THE WHOLE CONTRACT. AND WHAT ARE THEY GOING TO SAY? THAT IN 2006, THEY FOUND ONE E-MAIL WHERE THEY INTERNALLY WERE DISCUSSING THAT INTERSIL USED CHIPWORKS AS A PACKAGING COMPANY? IN 2006, INTERNALLY TALKED ABOUT THAT? THAT'S A MISUSE OF THE INFORMATION? WELL, IT DOESN'T EVEN MATTER. THEY BREACHED THIS AGREEMENT IN 2004 WHEN THEY DIDN'T RETURN THOSE DOCUMENTS AND SAID THEY WERE GOING TO RETURN THEM.

AND THEY SAY, OH, WE RELIED ON THE BROADVIEW AGREEMENT. YOU HEARD MR. TOKOS'S TESTIMONY. THE BROADVIEW AGREEMENT SAID, THE LEGAL TEAM COULD KEEP THE DOCUMENTS. IT WASN'T THE LEGAL TEAM THAT KEPT THESE DOCUMENTS. WE'VE HEARD ABOUT AT LEAST THREE OTHER

INDIVIDUALS THAT KEPT THESE DOCUMENTS. EVEN IF THAT'S THE AGREEMENT THEY WENT ON, THEY BREACHED THAT AGREEMENT TOO.

NO CONFIDENTIAL INFORMATION WAS PROVIDED. MR. MAHESWARAN CONTRADICTS THAT.

NO TRADE SECRETS WERE GIVEN. PRODUCT DETAILS ABOUT UNRELEASED PRODUCT ARE TECHNICAL TRADE SECRETS.

THE COURT: MR. ALIBHAI, YOU HAVE TWO MINUTES.

MR. ALIBHAI: THANK YOU, YOUR HONOR. THIS ALL COMES DOWN TO ONE THING. THEY HAD BOARD AUTHORIZATION TO OFFER 35 TO $45 MILLION. THEY OFFER $30 MILLION. AND REMEMBER, EVEN THIS $30 MILLION OFFER IS 10 NOW, 5 NEXT YEAR, AND MAYBE 15 IF YOU MEET SOME TARGETS. MR. LANEY SAYS, WE'RE WORTH $70 MILLION. THEY GOT THAT COUNTEROFFER IN THE FIRST WEEK OF JULY AND SAID, FORGET IT. THEY SAID, LET'S DO WHAT BRIAN NORTH SAID WE COULD DO. LET'S TAKE THE MORE INTERESTING PRODUCTS, LET'S REPLICATE THEM, LET'S COMPETE WITH THEM.

BUT THEY DIDN'T JUST WANT TO COMPETE. THEY WANTED TO PUT US OUT OF BUSINESS, AND THEY WANTED TO BE THE LAST NAIL IN OUR COFFIN. THEY ALMOST DID IT. AND I'M NOT GOING TO TAKE IT -- ANY APOLOGIES FOR TAOS, BECAUSE THEY SUCCEEDED, BECAUSE THEY THRIVED, BECAUSE

THEY CONTINUED TO WORK HARD AFTER ALMOST LOSING THEIR BUSINESS. THEY SHOULD BE CONGRATULATED FOR THAT GRIT THAT THEY SHOWED IN '04 AND '05 WHEN THEY HAD TOUGH TIMES, AND THEY DID WELL, BUT THAT DOESN'T MEAN THAT BECAUSE THEY DID WELL, THEY'RE ALLOWED TO LIE, CHEAT, OR STEAL. TODAY'S THE DAY TAOS GETS JUSTICE AND INTERSIL HAS TO ANSWER FOR THE WRONGS IT DID.

GOOD LUCK IN YOUR DELIBERATIONS.

THE COURT: ALL RIGHT. THANK YOU, MR. ALIBHAI.

LADIES AND GENTLEMEN, IT'S 4:37 P.M. YOU CAN TAKE WITH YOU, OF COURSE, YOUR COURT'S -- YOUR COPY OF THE COURT'S JURY INSTRUCTIONS TO THE JURY ROOM AND REFER TO THOSE. MS. SANFORD WILL GATHER UP THE EXHIBITS THAT HAVE BEEN ADMITTED INTO EVIDENCE, AND SHE'LL BRING THOSE TO YOU FOR YOU TO REFER TO DURING YOUR DELIBERATIONS.

IT'S 4:37. IT IS, AS YOU CAN HEAR, RAINING OUTSIDE. IT IS RIGHT AROUND 34 DEGREES OUTSIDE, SO I THINK THE STREETS ARE OKAY RIGHT NOW. AS FAR AS HOW LATE YOU MAY WANT TO STAY, I DON'T KNOW. YOU MAY WANT TO VISIT AMONG YOURSELVES AND DECIDE WHAT YOU'D LIKE TO DO THIS EVENING.

WE WILL -- WOULD NORMALLY STAY AS LATE AS YOU WANT TO STAY, WHETHER THAT'S 8 O'CLOCK, 9 O'CLOCK,

10 O'CLOCK. TONIGHT, I'M NOT SURE THAT IT'S WISE TO STAY THAT LATE, GIVEN THAT THE TEMPERATURES ARE DROPPING AND IT'S RAINING. TOMORROW MORNING, IT'S PREDICTED TO BE AROUND 26 DEGREES, SO IT'S -- I DON'T KNOW WHAT THE ROADS WILL BE LIKE IN THE MORNING. I'M GOING TO SUGGEST THAT WE PROBABLY HAVE A LATE START TOMORROW WHEN YOU COME BACK FOR JURY DELIBERATIONS.

BUT FOR RIGHT NOW, I'LL JUST ASK YOU TO GO TO THE JURY ROOM AND BEGIN YOUR DELIBERATIONS. AT -- AT THE POINT AT WHICH YOU WANT TO GO HOME AND COME BACK TOMORROW, PLEASE TELL MR. WESTBERG SO HE CAN LET ME KNOW ABOUT THAT. I THINK WE'LL PROBABLY, IN ANY EVENT, RECESS, PROBABLY -- WELL, I'LL WATCH THE TEMPERATURES, BUT MAYBE AROUND 7:00, SOMETHING LIKE -- 7:00 TO 8:00. I DON'T WANT TO STAY TOO LATE AND THEN THERE'S A PROBLEM GETTING HOME.

OKAY. THANK YOU, FOLKS.

COURT SECURITY OFFICER: ALL RISE.

(JURY NOT PRESENT)

THE COURT: ALL RIGHT. WE'LL BE IN RECESS UNTIL THE JURY RETURNS WITH A NOTE OR A MESSAGE. THANK YOU.

(BREAK TAKEN FROM 4:41 P.M. TO 4:42 P.M.)

THE COURT: MR. ALIBHAI AND MR. BRAGALONE, DO YOU AGREE TO THE EXHIBITS THAT MS. LYON IS PLACING

OVER HERE WITH THE COURT SECURITY OFFICER TO DELIVER TO THE JURY?

MR. ALIBHAI: YES, YOUR HONOR.

MR. KIMBLE: YES, YOUR HONOR.

THE COURT: ALL RIGHT. MR. KIMBLE, AND MR. ALIBHAI AGREE SO THAT'S FINE. MS. SANFORD, GO AHEAD AND DELIVER THE EXHIBITS TO THE JURY.

DEPUTY COURT CLERK: YES, SIR.

(BREAK TAKEN FROM 4:43 P.M. TO 5:03 P.M.)

(JURY NOT PRESENT)

COURT SECURITY OFFICER: ALL RISE.

THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS. THE COURT HAS RECEIVED A NOTE FROM THE JURY AT 4:52 P.M. JUST ANNOUNCING THAT TODD MILLER, JUROR NUMBER 7, IS THE PRESIDING JUROR. OKAY.

ALSO, THE COURT SECURITY OFFICER INFORMS ME THAT THE JURY WOULD LIKE TO COME INTO THE COURTROOM.

COURT SECURITY OFFICER: JUST TO LET YOU KNOW WHAT THEIR DECISIONS ARE.

THE COURT: WELL, CAN YOU ASK THEM TO WRITE A NOTE TO ME?

COURT SECURITY OFFICER: I CAN DO THAT.

THE COURT: OKAY. NOTE NUMBER 2 FROM THE JURY RECEIVED JUST NOW, 05:05 P.M., READS, "WE WOULD LIKE TO LEAVE AROUND 6:00 P.M. BEFORE WEATHER GETS BAD.

WE WOULD LIKE TO START AT 9:00 A.M. UNLESS SCHOOLS ARE CLOSED. THEN, WE WOULD DELAY UNTIL 11:00 A.M."

ALL RIGHT, LET'S SEE. I WILL WRITE THEM BACK AND TELL THEM THAT THAT'S FINE AND THAT THEY SHOULD -- THAT I WILL BRING THEM INTO THE COURTROOM AT 6:00 P.M. BEFORE THEY LEAVE

COURT SECURITY OFFICER: OKAY.

THE COURT: OKAY. MY RESPONSE IS, "MEMBERS OF THE JURY, THE COURT AGREES WITH YOUR PROPOSED SCHEDULE. THE COURT SECURITY OFFICER WILL BRING YOU BACK INTO THE COURTROOM AT 6:00 P.M. TONIGHT."

IS THAT AGREEABLE, MR. ALIBHAI?

MR. ALIBHAI: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

MR. BRAGALONE, IS THAT AGREEABLE?

MR. BRAGALONE: OF COURSE, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

COURT SECURITY OFFICER: THANK YOU, JUDGE.

THE COURT: OKAY. WE'LL RECESS FOR ANOTHER 50 MINUTES.

(BREAK TAKEN FROM 5:10 P.M. TO 6:04 P.M.)

THE COURT: KEEP YOUR SEATS. OKAY. IT IS A LITTLE AFTER 6:00. THE JURY HAD SAID THAT IT -- OR THAT THEY WOULD LIKE TO GO HOME AT 6:00, SO I'M GOING TO BRING THEM IN, TELL THEM THAT THEY CANNOT DELIBERATE

OVERNIGHT, THEY HAVE TO WAIT UNTIL THEY RETURN TOMORROW. THEIR NOTE SAID THAT THEY WOULD RETURN AT 9:00 UNLESS THE SCHOOLS ARE CLOSED. I'M GOING TO CLARIFY WITH THEM, THEY'RE TALKING ABOUT THE PLANO SCHOOL SYSTEM, AND WE CAN ALL WATCH THE TELEVISION TONIGHT AND SEE IF PLANO CLOSES THEIR SCHOOLS.

WHETHER THEY'LL DO THAT TONIGHT OR EARLY IN THE MORNING, I DON'T KNOW, BUT WE CAN ALL WATCH THE NEWS AND SEE. IF PLANO CLOSES THE SCHOOLS, THEN WE'LL RESUME AT 11:00 TOMORROW. HOPEFULLY IT'LL WARM UP, START TO WARM UP.

OKAY, MR. WESTBERG, BRING THEM IN.

COURT SECURITY OFFICER: ALL RISE.

(JURY PRESENT)

THE COURT: ALL RIGHT, TAKE YOUR SEATS, PLEASE. ALL RIGHT, LADIES AND GENTLEMEN, IT'S A LITTLE BIT AFTER 6:00, 5 AFTER 6:00. YOU HAD SAID THAT YOU WOULD LIKE TO GO HOME AT 6 O'CLOCK, SO WE'LL RECESS FOR TODAY. I JUST NEED TO REMIND YOU, YOU CAN'T DELIBERATE OVERNIGHT. YOU CAN'T BE ON THE PHONE WITH EACH OTHER. YOU CAN ONLY DELIBERATE WHEN ALL NINE OF YOU ARE TOGETHER IN THE JURY ROOM, AND KEEP IN MIND, YOU CAN'T TALK ABOUT THIS CASE TO FRIENDS OR FAMILY OR NEIGHBORS UNTIL AFTER YOU'VE REACHED A VERDICT AND RETURNED A VERDICT. THEN YOU CAN TALK TO ANYBODY YOU WANT TO,

OKAY?

OKAY. ALL RIGHT. YOU HAD SAID THAT YOU WOULD -- YOU'LL COME BACK AT 9 A.M. UNLESS THE SCHOOLS ARE CLOSED. I ASSUME WE'RE TALKING ABOUT THE PLANO INDEPENDENT SCHOOL DISTRICT, SO WE'LL ALL WATCH THE NEWS. IF PLANO CANCELS CLASSES FOR TOMORROW, THEN WE'LL KNOW THAT YOU WON'T BE BACK UNTIL 11 A.M. IF FOR SOME REASON THE ROADS ARE STILL BAD INTO THE MORNING -- HOPEFULLY IT'LL START TO WARM UP TOMORROW -- THEN, YOU KNOW, JUST GET HERE WHENEVER IT'S SAFE FOR YOU TO GET HERE. IF YOU'RE NOT GOING TO BE HERE BY 11:00, MAYBE YOU COULD CALL -- LET'S SEE.

DO THEY HAVE YOUR NUMBER?

DEPUTY COURT CLERK: YES, SIR.

THE COURT: OKAY. YOU HAVE MS. SANFORD'S NUMBER. CALL MS. SANFORD AND JUST LET HER KNOW. OTHERWISE, WE'LL EITHER SEE YOU AT 9:00 A.M. OR 11:00 A.M. TOMORROW. OKAY, THANK YOU.

COURT SECURITY OFFICER: ALL RISE.

(JURY NOT PRESENT)

THE COURT: OKAY. WE'LL RECESS UNTIL EITHER 9 A.M. OR 11:00 A.M. DEPENDING ON WHAT HAPPENS WITH THE PLANO SCHOOLS. THANK YOU. YOU'RE EXCUSED.

(PROCEEDINGS ADJOURNED AT 6:07 P.M.)

COURT REPORTER'S CERTIFICATION

I HEREBY CERTIFY THAT ON THIS DATE, MARCH 4, 2015, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

/S_____
BRYNNA K. MCGEE, CSR-RPR-CRR